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ABSTRACT

The Temporary State Commission to Study and Investigate the Problems of the Deaf presents a third annual report on the needs, services, and programs to aid the deaf and hearing impaired in New York State. The commission engaged in research activities to provide data necessary to substantiate legislation and to pursue the implementation of previous recommendations. The following areas of investigation are reported upon: hearing aids, life and automobile insurance, prevention and early detection of deafness (rubella immunization and infant auditory screening program), multiply handicapped deaf children (dependency, services and programs), preschool education, and care of the aged deaf. Recommendations are made. Extensive appendixes include the text of legislative acts, proceedings of commission's meetings and hearings, and questionnaires employed. (KW)

ED043165

Legislative Document No. 99

THE NEEDS OF THE DEAF AND HEARING IMPAIRED

A Report to the Governor and the
Legislature of New York State

Prepared by the TEMPORARY STATE COMMISSION
TO STUDY AND INVESTIGATE THE PROBLEMS
OF THE DEAF

855 Central Avenue
Albany, New York

March 31, 1970

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Temporary New York Comm. to Study and Investigate the Problems..

AUTHOR

The needs of the deaf and hearing impaired

TITLE

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THE COUNCIL FOR EXCEPTIONAL CHILDREN

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TO:

THE HONORABLE NELSON A. ROCKEFELLER, GOVERNOR of the STATE OF NEW YORK, and to the Honorable Members of the Legislature of the STATE OF NEW YORK

Sirs:

In accordance with Chapter 683 of the laws of 1966 as amended by Chapter 258 of the laws of 1967, by Chapter 646 of the laws of 1968, and by Chapter 710 of the laws of 1969, we have the authority to submit the following report of the activities of the Temporary State Commission to Study the Problems of the Deaf for the year ending March 31, 1970.

Respectfully submitted,

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Mrs. Robert K. Beardsley,
Vice Chairman

Senator William T. Conklin

Senator Basil A. Paterson

Senator Jess J. Present

Assemblyman Eugene Levy

Assemblyman Salvatore J. Grieco

Mr. Melvin J. Furst

Mr. Max Friedman

Reverend Martin J. Hall

Sister Nora Letourneau

Mr. Fred O. McGrath

Mr. Carlton B. Strail

Legislative document No. 99

THE NEEDS
of
THE DEAF AND HEARING IMPAIRED

THE
THIRD ANNUAL REPORT
on
The Findings and Recommendations
Concerning
The Needs, Services and Programs
To Aid the Deaf and Hearing Impaired
of
New York State

Prepared by the Temporary State Commission to Study
and Investigate the Problems of the Deaf
855 Central Avenue
Albany, New York

March 31, 1970

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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PREFACE

The New York State Temporary Commission to Study and Investigate the Problems of the Deaf was created by an act in the 1966 Legislature and has been extended by each subsequent Legislature up to the present. At the end of each State fiscal year, the Commission submits an Annual Report of its accomplishments and findings to the Governor and the Legislature for their information and consideration.

As in previous years, the Commission has worked closely this past year with various State agencies, schools for the deaf, and organizations of the deaf to implement meaningful and achievable recommendations to alleviate some of the many problems facing the State's deaf and hard-of-hearing population.

The Commission wishes to extend its thanks to all those persons who helped in this year's endeavors and who were responsible for the Commission's successful undertakings. With their continued support, the Commission is optimistic for future achievements in several areas which will benefit all the deaf and hearing impaired persons in New York State.

INTRODUCTION

This year constituted the third full working year of the Temporary State Commission to Study and Investigate the Problems of the Deaf. The focus of the Commission for 1969-70 was on the development of well-substantiated legislation to implement previous recommendations made by the Commission. The primary objective of the Commission this year was to engage in research activities which would provide the information and statistics necessary to substantiate such legislation.

The Commission engaged persons to serve as research staff to gather specific information and statistics in different areas of concern to the deaf. The research staff worked autonomously under the direction of the Staff Coordinator and were responsible for submitting periodic progress reports to him. Their assistance this year enabled the Commission to collect reliable data and to pursue the implementation of recommendations particularly in the areas of hearing aids and education for pre-school deaf children.

If continuation of the Commission is granted for the coming year, we are optimistic that even greater accomplishments can be achieved. The Commission feels that it has only begun to fulfill some of the needs of the deaf and hearing impaired in the State, and with a full research staff, further problems can and will be solved.

1969-70 ANNUAL REPORT

As is true for any disability group, there are a multitude of urgent services needed by the deaf and hearing impaired population today. There are, of course, several individuals, groups, and agencies who are involved in providing these services to this group, but the demand for services far exceeds what can be supplied. As the final report of the State Vocational Rehabilitation Planning Council stated:

> There are more tax supported and private facilities offering services for the hearing impaired in New York City than is available in all of the rest of the United States...yet all agencies report a short supply of audiologists, speech and hearing clinicians, teachers of the deaf, psychologists, psychiatrists and social workers who are interested in working with the hearing impaired. The problem of services in the upstate area is very much more acute.

As in previous years, the Temporary State Commission to Study and Investigate the Problems of the Deaf was concerned this year with reviewing the services available to the deaf and hard-of-hearing and with recommending and initiating action to improve the quantity and quality of such services. To this end, the Commission established priorities and organized its staff to investigate the following areas of concern: hearing aids, life and automobile insurance, prevention and early detection of deafness, multiply handicapped deaf children, care of the aged dependent deaf and education. Thus, the following report is organized to reflect these areas of interest and concern.

Chapter I

HEARING AIDS

Previous Approach

In its 1968 report to the Governor and the Legislature, the Commission outlined various pros and cons towards the licensing or certification of hearing aid dealers. At that time, the experience of other states with licensing laws was not known, and many felt that the code of ethics of the hearing aid industry offered protection enough for the consumer in New York State. The Commission reviewed a model bill on the subject of licensing which had been developed by the committee of state officials on suggested State legislation of the Council of State Governments and had recommended that it be introduced into the Legislature for study. It was felt that this would provide the opportunity for various groups, agencies and industries to criticize and/or support its merit and feasibility. This Commission sponsored legislation for certification of hearing aid dealers died in committee during the 1968 Legislature.

Research and Action Indicated

The Commission, realizing the benefits the deaf and hearing impaired persons could derive from such legislation, assigned a member of its research staff to investigate this area and make recommendations to the Commission. After serious consideration, the introduction of a hearing aid dealer licensing bill seemed indicated for many reasons.

New York State annually purchases an excess of 5,000 hearing aids under such State aided programs as Medicaid and the Division of Vocational Rehabilitation. The annual cost is estimated to be in excess of $2,000,000. These purchases from approved dealers at contract prices are made subsequent to a prescription resulting from an audiological examination at a state certified testing center. It would seem that the State's investment of up to $50 per examination in addition to the cost of the hearing aid should not be jeopardized by improper fitting, adjustment, service and operating instructions by persons whose competence and proficiency have not been demonstrated by written and practical examination. At present, neither the Department of Social Services nor the Division of Vocational Rehabilitation are able to insure such competency and proficiency by means of examination.

Assistant Attorney General Barnett Levy, in charge of the Consumer Frauds and Protection Bureau, indicates that as a result of the code of ethics of the Hearing Aid industry, promulgated in 1965, excellent results have been obtained in the disposition of and reduction of consumer complaints by hearing aid users against the industry. He further indicates that signers of the code have adhered to ethical practices and that complaints such as the use of white coats, bait and switch advertising and other problems have been reduced dramatically. The signers of the Code of Ethics do not include all dealers in the State of New York. There is no requirement for adherence to the code of ethics as a requisite for becoming an approved dealer for state aided programs.

The excellent results obtained by the Attorney General and industry leaders in the self-regulation of such complaints points to a willingness on the part of many New York State industry leaders to work for still more needed improvements. In developing legislative recommendations for licensing or proficiency certifications, the views of the industry should be given ample consideration. Discussions and correspondence with Mr. Paul Gilbert, President of the New York State Hearing Aid Dealers Association, revealed a willingness on the part of his organization to cooperate with the Commission in the development of legislation dealing with hearing aids.

Testimony by Dr. Thomas Hardy of John Hopkins University, before a sub-committee of the United States Senate Committee on the Judiciary, indicates that the improper fitting and/or selection of a hearing aid can cause severe physical and/or psychological damage to the user. He further alluded to the present nation-wide shortage of otologists, otolarynogologists, senior audiologists and properly equipped diagnostic centers as being a limiting factor in the ability of the hearing impaired to receive professional testing and prescribed hearing aids. It has been estimated that of 400,000 hearing aids sold annually in the U.S., only a small percentage are sold based upon testing in a facility which meets the standards for New York State certification. It appeared, therefore, that it might be in the best interest of the hearing impaired citizens of New York State that they be assured that dealers who make audiological examinations select, adjust and fit hearing aids possess the technical skill to adequately perform these functions. The Commission staff made the following observations:

1. The weight of available evidence points to the fact that few, if any, hearing aid dealers have the equipment necessary to give audiological examinations to children. In fact, Medicaid regulations prohibit the dispensing of a hearing aid to children under 21 without an examination by a physician. Consideration should be given to the possibility of legislation to forbid the sale of a hearing aid to person of tender years without evidence of a recent examination by a physician.
2. Hearing aids are offered for sale by mail to residents of New York State. Although the price and quality of these instruments

in many instances may be excellent, the unfavorable results which could result from the use of the "wrong instrument" could be damaging. Legislation to limit the sale of a hearing aid without an audiological examination should be considered.

3. A major mail order firm has offered a "do-it-yourself" ear mold kit. The dangers inherent in the use of such a device are self evident. Commission action on discouraging the sale of this item should be considered.

4. Audiometers maintained by hearing aid dealers should be calibrated regularly. Consideration could be given to legislation requiring semi-annual testing of this equipment by an appropriate agency. State certified testing centers are required to have their instruments tested and calibrated regularly and maintain a log of this testing.

During this research, it was learned that twenty states in the U.S. had enacted laws licensing hearing aid dealers beginning with the State of Oregon in 1961. Copies of the legislation in most of these states was obtained and reviewed by the Commission. In addition, conferences were held with members of the Hearing Aid Dealers Association and persons connected with the hearing impaired were interviewed concerning the reliability of hearing aid dealers. The Commission took important notice to the fact that New York State itself is the single largest State purchaser of hearing aids in the entire country.

Hearing Aid Legislation

As a result of the work of the staff and the exchange of information at Commission meetings, a bill was prepared, printed and pre-filed in the Assembly at the request of the Commission chairman. In order to sample public opinion about the bill throughout the State, public hearings were scheduled in Rochester, New York, for December 11, 1969, and in New York City for January 15, 1970. Both hearings were conducted as scheduled. They were well attended and substantial information was obtained from those who testified. It should be remarked that those participating were hearing aid dealers, audiologists and otolarynogologists and several other persons who work with the hearing imapired. The Commission was quite pleased with the response and interest shown by those who testified at the hearings. The proceedings of both of these public hearings may be seen in Appendix L and M in the back of this report.

A copy of the Commission drafted bill for New York State appears in Appendix F in this report. The copy reproduced is the original print of the bill. As a result of the public hearings, the Commission's deliberations and conferences with the Department of Education, revisions will be made. It is anticipated that the revisions will affect form rather than substance with a notable exception of the recomposition of the Board of Examiners by providing that its membership consist of five hearing aid dealers, two otolarynogologists and two audiologists. The bill with all of its changes will be introduced in both houses of the Legislature during 1970.

Recommendations for Proposed Legislation

The Commission recommends that the bill be enacted into law. It is the Commission's opinion that the bill will serve two vital functions:

1. It will provide a means of consumer protection. The bill establishes a board to oversee the licensing and conduct of the hearing aid dealers. Any person who feels aggrieved by the practice or procedure of a hearing aid dealer, can file a complaint with

the board and have the matter heard before it. In addition, the State would now possess the power to revoke a license which would in effect put a dealer out of business. Under any prior practice a person who may have committed fraud or an unethical practice could be enjoined but could also continue in his business; now the business itself can be terminated. The State will thus have direct regulatory powers.

2. The bill will provide a means for improving the standard applicable to those who sell, service and fit hearing aids. The board has power through its examination procedures to establish standards of education and proficiency in the hearing aid field of endeavor. The standards for the practice would undoubtedly rise and bring with them a commensurate improvement in public satisfaction.

Chapter II

INSURANCE

The Problem

In the past there have been many allegations on the part of the deaf motorists and others that insurance companies had been discriminatory towards deaf persons in the issuance of insurance policies. The insurance companies, on the other hand, have been just as adamant that they do not discriminate on the basis of deafness and hearing impairment. Since this problem is of great concern to the deaf and hard-of-hearing population, the Commission decided to thoroughly investigate this area this year.

The Commission felt that, to be fair, it was only right to survey the positions of both parties in order to come to a reliable conclusion. A research staff person was assigned to investigate this area and to make a full report to the Commission.

The Commission staff was interested in surveying the policies of both automobile and life insurance companies toward the deaf and hearing impaired. To this end, two separate questionnaires were developed -- one for distribution to life insurance companies and the other for distribution to automobile insurance companies. The specific purposes of these questionnaires were to discover what kinds and amounts of insurance the deaf person is able to obtain and what prices he has to pay for it. The Commission staff first dealt with the area of life insurance.

Life Insurance Study

A questionnaire (See Appendix G) was sent to a total of 27 life insurance companies which were selected from a random sampling of names in the "Directory of Insurance Companies in New York State" March 1, 1968, which had been obtained from the New York Insurance Department. As can be seen in Appendix G, the following questions were asked:

1. Does your company write life insurance for deaf persons?
2. What amounts of life insurance are available to these deaf persons? Do these amounts differ from the amounts available to persons with normal hearing?
3. Are double indemnity or accidental death provisions written in such policies?
4. Do you apply the same premium rates for both deaf and normal hearing persons?
5. Does age have more bearing on coverage for a deaf person than for a normal hearing person?
6. Has your company adopted any standards regarding percentage of hearing loss for rating purposes? for coverage purposes?
7. In the last 24 months, has your company written life insurance for deaf persons? If so, how many? At what premiums? At what coverage?
8. Has your company refused to renew policies on deaf persons? If so, for what reasons?

The Commission received an 85 per cent response (23/27 companies) to its initial questionnaire. Following is a tabulation of the responses to the questionnaire by individual questions;

QUESTION #1: Does your company write life insurance for deaf persons?

Percentage	Response
100% (23/23)	Yes

QUESTION #2: What amounts of life insurance are available to these deaf persons? Do these amounts differ from the amounts available to persons with normal hearing?

Percentage	Response
87% (20/23)	Same as for normal hearing persons.
4% (1/23)	Approximately 70% of the amount available to standard risks.
4% (1/23)	Usually the same; in some rare instances (i.e. side effects of an operation) an extra premium is charged.
4% (1/23)	No answer.

QUESTION #3: Are double indemnity or accidental death provisions written in such policies?

Percentage	Response
35% (8/23)	Sometimes, usually depending on the degree of deafness (i.e. yes, if a hearing loss is correctable; no, if loss is totsl) or a degree of adjustment.
22% (5/23)	Yes, same rate under most circumstances.
22% (5/23)	Under no circumstances or generally not.
13% (3/23)	Offer accidental death at an increased rate of 1½ or 2 times the standard rate.
9% (2/23)	No answer.

QUESTION #4: Do you apply the same premium rates for both deaf and normal hearing persons?

Percentage	Response
35% (8/23)	Yes, no exceptions explained.
30% (7/23)	Yes, with modifications (i.e. total loss).
17% (4/23)	Yes, in most instances.
4% (1/23)	No, at twice the normal rate.

QUESTION #5: Does age have more bearing on coverage for a deaf person than for a normal hearing person?

Percentage	Response
70% (16/23)	No
9% (2/23)	No answer.
4% (1/23)	Yes, no explanation given.
4% (1/23)	"At age 50 and over, deaf persons who are employed in hazardous occupations will generally qualify for insurance in our first sub-standard underwriting classification, at 1½ times the normal rate."
4% (1/23)	"For a child, if there is a speech problem, we do not offer accidental death."
4% (1/23)	"More apt to grant life insurance for a working adult than to a child."
4% (1/23)	"We would underwrite a case of congenital deafness differently than acquired deafness coming on later in life."

QUESTION #6: Has your company adopted any standards regarding percentage of hearing loss for rating purposes? for coverage purposes?

Percentage	Response
39% (9/23)	No, to both rating and coverage.
9% (2/23)	No answer.
4% (1/23)	Yes, no explanation given
4% (1/23)	Yes, for rating purposes; no, for coverage.
4% (1/23)	Three categories: a. slight hearing loss, b. total hearing loss with correction,

	c. total hearing loss without correction.
4% (1/23)	"Yes, but in almost all cases we issue the standard rate up to our normal retention limits."
4% (1/23)	None other than elimination of accidental death for 100% hearing loss.
4% (1/23)	The following categories: a. slight, b. moderate, c. marked, d. total.
4% (1/23)	"Marked or total deafness would be viewed more critically than slight deafness."
4% (1/23)	Yes, for accidental death and premium waiver.
4% (1/23)	No, for life insurance. Most deaf persons are considered standard risk unless totally deaf; Yes, for Workmen's Compensation, accident insurance, disablity insurance and health insurance.
4% (1/23)	Categories: a. slightly deaf, b. marked with hearing aid, c. marked without hearing aid, and d. deaf mute.
4% (1/23)	If totally deaf in both ears, accidental death insurance is provided only if person is well adjusted and self-supporting.
4% (1/23)	Distinguish between a hearing loss greater than 50% (in which accidental death is 1½ times standard rate) and less than 50% (no difference in rate).

QUESTION #7: In the last 24 months, has your company written life insurance for deaf persons? how many? at what premiums? at what coverage?

Percentage	Response
65% (15/23)	Yes, but no records available.
17% (4/23)	Yes, most likely at regular premiums and coverage.
9% (2/23)	No naswer.
4% (1/23)	"Deaf mutes not adjusted to conditions or engaged in hazardous duties may pay $2.50 extra per thousand annually (many are covered in group insurance.)"
4% (1/23)	Total loss without correction- $2.50 per thousand. Total loss with correction- at standard rate.

QUESTION#8: Has your company refused to renew policies on deaf persons? If so, for what reasons?

Percentage	Response
61% (14/23)	No.
26% (6/23)	Not for deafness alone; seldom; our policies are not cancellable; etc.
13% (3/23)	No answer.

An analysis of the responses to these questions was presented to the entire Commission. After discussion it was concluded that life insurance companies did not discriminate against deaf persons in the issuance of insurance policies on the basis of deafness alone. If a deaf person was refused coverage or had to pay slightly higher premiums, it seemed that the decisions were made on the same basis on which normal hearing persons were evaluated. In other words, age, occupation, health, etc. seemed to be used as criteria for determining what coverage and rate a deaf person would receive just as it is done for normal hearing persons. On this basis, the Commission was satisfied that deaf persons were not discriminated against by life insurance companies and that there was no evidence to justify continuing investigation in this area.

Automobile Insurance Study

To gather facts and information in the area of automobile insurance, the Commission staff developed a questionnaire (See Appendix H) which was sent to a total of 48 randomly selected insurance companies. The purpose of the questionnaire was to attempt to gain information about underwriting procedures used by insurance companies as they relate to the deaf driver and secondly, to learn whether the companies might have files or records from which statistical information could be compiled. The questionnaire asked for the following information:

1. What criteria or definition of deafness is used when your company underwrites coverage for a deaf person?
2. What are the minimum/maximum limitations of liability insurance allowed a deaf insured by your company?
3. What are the minimum/maximum limitations of liability insurance allowed a normal hearing person by your company?
4. Has your company adopted any standards regarding percentage of hearing loss for rating purposes? for coverage purposes?
5. Does your company apply normal premium rates for any deaf driver?
6. In the last 24 months, has your company written auto liability insurance for deaf motorists? If so, for how many? At what limits of liability? At what premium?
7. Has your company refused to renew policies on deaf persons? If so, for what reasons?

An initial response of 37.5 per cent (18 /48) was received from the automobile insurance companies surveyed. Since the Commission did not feel that this was a satisfactory response, a follow-up letter was sent to the 30 companies who had not responded to the questionnaire. The follow-up letter obtained responses from an additional 10 companies which brought the total response to 58 per cent (28/48). The following is the tabulation of responses to the questionnaire by individual questions:

QUESTION #1: What criteria or definition of deafness is used when your company underwrites coverage for a deaf person?

Percentage	Response
64% (18/28)	No criteria exist.
14% (4/28)	Complete loss of hearing, ineligible for insurance; partial loss, eligible with hearing aid.
14% (4/28)	No answer.
4% (1/28)	Criteria are: deaf, mild with hearing aid, mild without hearing aid.
4% (1/28)	"We do not have a statement in our underwriting guide to the effect that persons with any type of physical impairment are subject to approval by the company before binding coverage. However, we have a procedure for making exceptions to this guide and we do so on numerous occasions."

QUESTION #2: What are the minimum/maximum limitations of liability insurance allowed a deaf insured by your company? For a normal hearing person?

Percentage	Response
75¢ (21/28)	Minimum/maximum same as for normal hearing person or no minimum/maximum.
21% (6/28)	No answer.
4% (1/28)	If hearing aid, normal. If deaf, and asked specifically to take on such a risk by the manager, the maximum would be the minimum required by the state.

QUESTION #4: Has your company adopted any standards regarding percentage of hearing loss for rating purposes? For coverage purposes?

Percentage	Response
71% (20/28)	No.
21% (6/28)	No answer.
4% (1/28)	No, unless totally deaf.
4% (1/28)	Yes, referred us to bulletin.

QUESTION #5: Does your company apply normal premium rates for any deaf driver?

Percentage	Response
89% (25/28)	Yes.
11% (3/28)	No answer.

QUESTION #6: In the last 24 months, have you written automobile liability insurance for deaf motorists? How much? At what limits of liability? At what premiums?

Percentage	Response
54% (15/28)	Yes, no records kept.
21% (6/28)	Unknown, no records kept.

18% (5/28)	No answer.
4% (1/28)	No, not voluntarily; yes, under assigned risk.
4% (1/28)	Yes, we have an account consisting entirely of deaf drivers which produces an annual premium of $90,000 through $100,000. There are an estimate of 700 deaf drivers in this account. They are at unlimited liability and normal premiums. "We have had this account for many years and you may be interested to know that we have consistently lost large amounts of money on this account. Up until a few years ago, we had done no selection of deaf drivers and automatically insured everyone who applied. Because of the large losses we changed our approach and now applied the same standards applying to our normal insured. The physical damage loss ratio has been consistently good for the last three or four years, but the liability loss ratio continues to be terrible. Inspite of this, we believe that we may be able to break even in the future. Our poor 1967 loss ratio was caused primarily by one large loss. You can imagine that a loss of $27,000 where the entire account is only $100,000 can seriously distort the loss experience. I do not have 1968 results available, but I am informed that there have been no large losses; and it is es-

> timated that for the first time we may be close to breaking even for the one year. It is my personal opinion that properly selected deaf drivers should produce at least an average loss experience and could conceivably produce better than average loss experience. I have felt this for a long time; but unfortunately the experience of my company does not uphold my personal convictions."

QUESTION #7: Has your company refused to renew policies on deaf persons? If so, for what reasons?

Percentage	Response
46% (13/28)	Never solely because of deafness.
32% (9/28)	No records kept.
24% (4/28)	Not to their knowledge.
7% (2/28)	No answer.

Results of Auto Insurance Study

The Commission, after weighing the quality of the responses, determined that no conclusions could be drawn from the responses. However, some observations can be made.

First, from prior work of the Commission, it was apparent that deaf drivers were being automatically placed in the assigned risk plan. It would appear from the responses that the companies do not place all drivers automatically in the assigned risk pool. Most companies responded that they consider deaf drivers no differently than the unimpaired driver.

Second, the companies responding conveyed the impression that generally their underwriting procedures do not consider deafness in rating availability or policy limits.

Third, although not dictated in the compilation of the responses, the letters from the insurance companies generally indicated that the companies do not keep separate records or files on deaf drivers.

As the results from the questionnaire proved inconclusive, the Commission directed a press release be issued requesting that deaf drivers who claimed to be aggrieved on matters of automobile insurance, contact the Commission (See Appendix I). This press release was distributed to 93 newspapers throughout the State and to 112 organizations, schools and churches serving the deaf in the State. The response was minimal in that only eight deaf persons responded to our solicitation for grievances. Two persons replied by listing only their insurance coverage and premiums paid; two persons replied by stating only that they were deaf drivers; one person replied that he pays higher rates than others; one person replied that he wore a hearing aid and listed his coverage and premiums paid; one person claimed he was over charged; and one person who had been driving for twelve years and had no accidents was automatically in the assigned risk pool.

Of the eight responses received, the driver who claimed that she was automatically placed in the assigned risk pool was the only reply which pointed to discrimination on the basis of a hearing handicap. Since the other replies did not furnish the Commission with enough information, a questionnaire was developed to obtain more detailed information (See Appendix J). Only three of the eight persons responded to the questionnaire and the information obtained did not support a charge of discrimination except in the one case already mentioned. All in all the press release did not achieve substantial response from which to compile statistical information.

The Commission also sought to obtain information from other sources. Correspondence was obtained from various persons such as Lowell J. Myers of Chicago, Illinois, who offered a pamphlet entitled "How to Get Automobile Insurance", Howard T. Knupp of the National Underwriter Company, and Len Scandur of the New York Daily News who wrote an article on deaf drivers and automobile insurance. Although the writings of these persons are informative, their sources of information have not yet been obtained.

Inasmuch as the Commission has been unable to develop sufficient information either by questionnaire or by public response, it has been determined that a substantial problem cannot be found and that no legislation can be proposed by the Commission. Unless contrary information and statistics are made known to the Commission in the future, no further recommendations will be made in this area.

Chapter III

PREVENTION AND EARLY DETECTION OF DEAFNESS

Preventive Techniques

Much deafness today can be prevented. It is well known that deafness, like blindness and mental retardation, can be caused by a wide range of physical factors. When primary prevention techniques are practiced, the incidence and severity of deafness can often be lessened or eliminated.

Primary prevention techniques can include any of the following practices: the recognition and treatment of RH incompatibilities and syphilis, immunization of pre-pubertal girls against rubella virus (German measles), improvement of labor and delivery techniques to lessen the possibility of anoxia and brain damage, administration of antibiotics to treat otitis media, and the practice of improved prenatal and perinatal care.

Once a child is born, he may become exposed to various diseases or have various conditions which may impair his hearing acuity. Mumps, meningitis, allergies, fluid in the middle ear or administration of antibiotics such as streptomycin, may cause deafness or hearing impairment. The prompt diagnosis and treatment of these conditions is a form of secondary prevention which can prevent hundreds of potential auditory threatening conditions per year.

Although these advances in medical knowledge and technology are encouraging, deafness is not on the verge of elimination. Each year there are more premature and low birth weight infants born. Often these conditions involve hearing impairment due to underdeveloped auditory organs. Some deafness results from the degeneration of the organ of Corti which is a hereditary disease. Anyone who has this defect should consult a genetics expert before marrying any person with normal hearing whose family tree includes persons with familial deafness.

Rubella Immunization

One of the brightest rays of hope in the fight against deafness has been the development of a rubella (German measles) vaccine. If a woman contacts rubella during the first three months of her pregnancy, the virus can affect the unborn fetus with deafness, mental retardation, heart defects and other physical defects, if the child lives at all. It has been estimated that during the last rubella epidemic in 1964, the virus was responsible for approximately 20,000 still births and spontaneous abortions and that an equal number of infants were born with often incurable and uncorrectable malformations including deafness.

In June 1969, the first rubella vaccine was licensed, and the New York State Health Department embarked on a comprehensive state-wide rubella immunization program. To coincide with the recommendations of the Public Health Service, the Health Department recommended immunization of children from ages 1 to 10 with first priority for children in the first years of social group experience. As more vaccine became available, the Health Department revised its recommendations to include immunization of the entire age group 1 through 10. Children were chosen for vaccination since they constitute the primary source of infection for pregnant women and since the vaccine has not yet proven safe for administration to pregnant women. The Department estimates that approximately 1.4 million children will be vaccinated during 1970 and approximately 3.6 million by 1972.

In February 1970, the Commission was invited to send a representative to a meeting of voluntary agencies sponsored by the Health Department. The purpose of the meeting was to enlist the aid and support of the voluntary agencies in promoting the state-wide rubella immunization of children.

All the agencies represented including the Commission for the Blind, the National Foundation, the United Cerebral Palsy offered their cooperation in furthering the campaign throughout the State. The Commission supports the program and sees it as a real opportunity to decrease each year the number of infants born with hearing defects.

An Ounce of Prevention

As the old saying goes, "An ounce of prevention is worth a pound of cure." The Commission would recommend that each mother and each expectant mother take advantage of the rubella and mumps vaccine to insure the protection of her children's or yet unborn child's hearing safety. Only through conscientious application of known preventive methods can any disease be effectively curtailed or eliminated.

Early Detection

Despite the development of new preventive techniques and the increasing and conscientious practice of these techniques, deafness will remain a handicap of thousands of persons. If deafness or hearing impairment cannot be averted, the best thing to do is detect it early so that effective programs of habilitation and rehabilitation can be initiated.

In New York State it is not until a child reaches school age that he is guaranteed the benefit of an auditory screening test. From the standpoint of effective habilitation, children with hearing difficulties should be discovered by the age of 2. If a hearing disability goes undetected until the age of 5, the child will suffer language and communication difficulties which may never be fully correctable.

Infant Auditory Screening Program

As a result of previous recommendations made by the Commission, the

State Health Department undertook the development and implementation of an infant auditory screening program. The Bureau of Maternal and Child Health, Division of Preventive Health Services, New York State Health Department developed a manual for testing and assessing the auditory function of infants in order to identify and refer such children to the appropriate professionals for treatment (See Appendix D). An initial announcement concerning the availability of this manual was made to all regional, county, city and district health agencies. The manual was and is still being distributed to all agencies and clinics concerned with child care services who indicate an interest in offering such services. The staff of the Bureau of Maternal and Child Health provides initial instruction, demonstration and consultation to such interested agencies.

The manual itself consists of a description of the stages of hearing development in the normal child by age, a description of the development of vocalization, speech and language by age, an outline of responses to sound by age and an outline of procedures to use in testing an infant for auditory function. The persons who perform the auditory tests simply present the infant with a noise stimulus for different frequencies such as a high frequency squeeze ball, a middle frequency xylophone and a low frequency Indian tom-tom and observe the child's reaction or inattention to this stimuli for each ear. If a child fails the initial screening test, retesting is conducted four weeks later. Referrals for complete audiologic examination and follow-up are made when indicated by the local screening center. The average age at which such screening is performed is about eight months when the center is quite sure that false positives will be kept to a minimum.

To date, approximately one-third of the health jurisdictions have requested the manual and have or are planning to offer infant auditory screening services. The majority of these interested health jurisdictions have been well-baby clinics. The State Health Department provides the consultation and expertise of a physician, Consultant Speech and Hearing Therapist, and Consultant Nurse to the interested facilities for the development of individual programs. The number of facilities providing these services is encouraging and the number no doubt would be greater if the professional staff required by these programs were available. Any agencies or clinics who are interested in obtaining the manual and instruction are encouraged to contact the Bureau of Maternal and Child Health.

Chapter IV

THE MULTIPLY HANDICAPPED AND DEPENDENT DEAF

Introduction

The public has been awakened to the plight of the multiply handicapped deaf. The educators and/or professional workers have noted and discussed a great deal on the problems of the multiply handicapped deaf. However, it is sad to note that very little has been effected to create habilitation and rehabilitation programs. Most of the literature on this problem also reveals a high incidence of low intelligence ability among the deaf who have been termed multiply handicapped. Thus, when one speaks of the multiply handicapped deaf, he generalizes a person who is deaf and has another handicap, which may be retardation or emotional.

In other words, he is the totally dependent person generally found in a State Hospital or a State School. Drs. Rainer and Altshuler (Mental Health Services) found in their initial surveys(1) that many hospital cases diagnosed as psychosis with mental deficiency were found to lack good communication skills and some other emotional disturbances but not actually retarded.

A guide for public health personnel services for children with emotional disturbances states that physical and mental handicaps deserve special consideration as etiological factors in emotional disturbances --- (and) their need for maturing and stimulating experiences, or substitutes for them, is greater than among children who do not have handicaps.(2) The 1966 Joint Legislative Committee on Child Care Needs declares that once a child enters a State Hospital he is likely to remain there longer than an adult. It adds that school officials and Family Court

Judges encounter great difficulty in getting service for the children who obviously need help.(3) As if these are not enough, the 1966 Joint Legislative Committee reenforces the 1968 Temporary Commission to Study Problems of the Deaf in its allegation that there is no coordinated inter-departmental statewide planning for children, no center for over-all responsibility, no statewide priorities, and no clear-cut pattern of accountability. It reiterates that it is common for several agencies to be acting simultaneously for the same individual. Thus, there is a growing concern about the status of the dependent deaf population in New York State.

Incidence of Dependency

Section 3241 and 3242 of the Education Law requires a complete census of all physically handicapped children from birth to 21 years of age be filed each year with the State Education Department.(4) The purpose of this census is to locate children who may be in need of special educational services. The Bureau of Physically Handicapped Children has established criteria for the reporting of children with impaired hearing.

Upon inquiry, the Bureau was unable to furnish complete statistics re the number of hearing impaired children in New York State. (It is interesting to note that New York Education Law - Section 905, Article 19 - requires that each pupil receive an annual hearing test.) It cited the fact that Senator Bartlett, Syracuse, successfully submitted legislation to exempt the Big 6 Cities - Buffalo, Rochester, Syracuse, Utica, Albany, and New York - from such reporting. In addition, a statement was made that the Boards of Cooperative Educational Services (BOCES) could not initiate hearing evaluation in any cooperating schools unless solicited to do so. Thus, an official census taking is thwarted. Another reason was that staff shortages make it impossible for such annual hearing tests.

A preliminary questionnaire was sent to each director of the 22 State Hospital and 11 Schools located in New York. (See Appendix E.) From the respondees to date there are approximately 600 deaf residents in 7 of the State Schools and 146 deaf patients in 6 State Hospitals. (This figure for the State Schools does not include any of the population in private schools receiving state financial support.)

A review of literature reveals evidence to suggest that the national incidence of mental retardation is increasing.(5) Many reasons have been given to explain this rise. Frisina (1955), in a study of populations in 3 midwestern residential schools(6) using an I.Q. criterion of 79 on the Grace Arthur Point Scale of Performance, Form II, found that 9.2% of the selected schools' population were mentally retarded. This study did not include those children who were asphasic, psychotic, cerebral palsied or other handicaps.

In the researching of published school populations in the Annual Directories of Services for the Deaf in the United States (May 1966 - May 1969) the figures are listed for New York State as follows:

1966 - 3,398
1967 - 3,593 (+195)
1968 - 3,989 (+396)
1969 - 4,740 (+751)

These startling figures show a continued annual increase which makes the educators shudder because of the schools being filled to near maximum (if not already) and applications are continuing to be submitted, particularly in the younger age group. These state supported schools for the deaf have utilized private funds to expand further without substantial funancial aid.(7)

To use Frisina's 9.2 per cent to arrive at a conservative estimate as to how many dependent deaf children there are in New York in 1969, we find that in the State's total educational program 436 are deaf and mentally retarded, who in reality are receiving "watered down curriculum" for educable deaf children until they can be placed with some other agency.(8) (This figure, in addition to the 600 residents of the State Schools, reveals there are over 1,000 so-called 'dependent deaf'.)

In the State Hospitals for the mentally ill, it was difficult to ascertain the number who were deaf. As noted previously, there are approximately 146 patients in 6 hospitals. Further correspondence and research must be awaited before a valid incidence is established.

Available Services and Programs

Almost every State Hospital Director mentioned that once a patient is admitted and found to be deaf, he was referred to an Otologist to determine the degree of loss and the feasibility of the fitting of a hearing aid. Then he was habilitated into the program planned for hearing patients. Practically no State Hospital had a program designed for deaf patients except the special unit at the Rockland State Hospital in Orangeburg, New York, which is basically a demonstration project. Several admitted there was no machinery set up to keep records on the deaf patients other than reporting such patients to the Rockland Unit where general statistical records were maintained. Thus services and/or programs available to the deaf patients are general.

Where feasible, many offered speech therapy but this appeared to be the only specialized service afforded to this clientele of the State

Hospitals. It is interesting to note that one hospital used data which was the result of the work of a local school for the deaf and the Division of Vocational Rehabilitation office in the same city. The other side of the coin reveals another hospital's concern of the totally dependent deaf persons in its institutional population. It has taken steps to improve its habilitation program and its prognosis makes it safe for it to project community placement for at least 15 of the 28 patients in the near future.

Problems to be Resolved

The available literature and many respondees stated that the main problem for the institutionalized deaf patients was that of communication. Although most hospitals were concerned with hearing aids, and special therapy, they were not concerned with other means of communication except for pencil-paper media and some gestures. The Rockland Unit realizes this and has set up a communication program in which the language of signs is taught and utilized.

Another problem is the lack of any effective and continuous program for the patients in a State facility and the children in the public and state supported schools. Furthermore, in all these educational programs, the staff was either inadequate and/or untrained.

When a deaf patient is placed in a general ward according to his limitations or abilities, he is being isolated due to his inability to hear or to talk with his peers. The isolation is tantamount to a life sentence since that is not a habilitative program genuinely geared to meet his needs.

To obtain further information on the dependent deaf population, the Commission invited Dr. John D. Rainer of the New York State

Psychiatric Institute and Dr. McCay Vernon of the Department of Psychology, Western Maryland College, to discuss their views and information on the dependent deaf at various Commission meetings.

Professional Recommendations

After Dr. Rainer had thoroughly briefed the Commission on the current New York State mental health services program, he was asked what recommendations he would like to leave with the Commission. Dr. Rainer recommened the following:

1. Creation of a mental health facility for those deaf children between the ages of 4 - 16.
2. Establishment of sheltered workshops across the state for deaf persons who cannot work under pressure.
3. The establishment of a Home with a special trained staff for the mentally retarded deaf.
4. Have teams of mental health personnel to work in schools for screening and therapeutic services.

In a later Commission meeting, Dr. McCay Vernon agreed with Dr. Rainer that highest priority should be given to the provision of mental health services to multiply handicapped deaf children. According to Dr. Vernon, no therapeutic services are currently available for these children. Before recommendations can be made regarding the need for such mental health services, the Commission would have to assess the actual number of such needy deaf children in the state. Dr. Vernon suggested that this number could best be assessed by:

a. writing the superintendents or heads of all residential and day programs for deaf children to determine first the number they were forced to drop from school during the last six years, and, second, the number they had to refuse admission over this same period. If they will specify the number and the reasons for dropping or dismissing, some idea of the number of mentally ill, mentally retarded and otherwise mentally handicapped will be available.

b. The number of deaf children now in State Hospitals for the mentally ill and for the retarded and juvenile correctional institutions should be assessed by actual ward-by-ward census in these facilities by a person able to use the language of signs.

c. In establishing this facility and others for deaf persons, thought should be given to:

    1. Should they be units in existing facilities.
    2. Should they serve a variety of types of deaf persons (mentally ill, mentally retarded, multiply handicapped, aged, dependent, etc.)
    3. Can they be geographically located in terms of available services and population distribution. and,
    4. Should they be on or near the campuses of existing schools for deaf children.

Dr. Vernon supported Dr. Rainer's recommendations and offered some of his own recommendations to the Commission. Dr. Vernon stated that the issue of whether deaf patients should be grouped in units in existing facilities, all treated in a separate free standing facility for the mentally retarded deaf, or treated in a facility serving deaf persons of many different kinds of disability including mental illness must be resolved and soon. Rubella (German measles) and prematurity will continue to increase the number of mentally retarded deaf children needing care in the near future. The following are briefly some of the recommendations which Dr. Rainer made during his session with the Commission.

1. The use of a mental health team to screen and diagnose mental health problems in schools is of value only if services for identified cases are to be made available.
2. A census of deaf persons in State Institutions including hospitals and correctional facilities is essential. Data obtained thusfar is outdated and/or imcomplete. As previously mentioned, an adequate census can only be obtained quickly and at reasonable cost if a person skilled in manual communication makes a unit-by-unit check in all institutions and:
    a. talks to ward attendants to get the names of patients who act as though they may be deaf.
    b. interviews all these patients to see if they know sign language or if they will give other clear evidence of deafness, and,
    c. in doubtful cases, the records of patients should be read for identifying facts. The differential diagnoses of whether a patient is deaf, autistic, schizophrenic, brain damaged or retarded is difficult to make in many cases. The above method is a practical approach and a workable overall method to obtain such a census.
3. Patients presently in hospitals for the mentally ill and mentally retarded should be grouped together. This would cost little or nothing as these people are presently in hospitals. However,

instead of their present setting of anti-therapeutic isolation, they would be able to communicate with one another; staff would learn manual communication; and most importantly, existing community services could be effectively utilized. For example, the Division of Vocational Rehabilitation counselors, clergymen, the deaf community and others could effectively rehabilitate some of these persons if they were grouped and in a milieu with other deaf people. At present, deaf patients are so scattered and isolated that this is not possible.

4. In order to obtain some picture of the number of dependent deaf persons not yet institutionalized, not of school age, and not functioning adequately the Division of Vocational Rehabilitation should be asked about the number of deaf clients they have especially deemed non-feasible.
5. Summer training institutes for psychologists, psychiatrists, social workers, audiologists, etc. who see deaf children and adults should be conducted regularly. By orienting such professionals in key agencies to the behavior aspects of deafness, prevention and case finding as well as services in general would be greatly facilitated.
6. In conjunction with the strong emphasis on early identification of deaf children, there is need for counseling and education of the parents of these children. Otherwise, identification is not of any great value. This counseling of parents is a major preventive step in terms of later mental and educative problems. Institutes and programs as described above would be needed to prepare counselors for this work.

The Commission concluded this year that a significant improvement can be made in services to deaf mentally ill and deaf mentally retarded patients at little or no cost to the State of New York. The problem in upgrading services for the totally dependent and multiply handicapped deaf person in New York State is the shortage of competent professional persons in the fields of education, speech and hearing therapy, audiology and other rehabilitative personnel. The Commission feels that is has obtained much needed basic information in this area from such persons as Dr. Rainer and Dr. Vernon. Next year the Commission plans to put high priority on the recommendations which have been made by both of these persons. It feels that once the statistics on totally dependent and multiply handicapped deaf persons in the State are obtained, realistic and worthy recommendations can be made to better the mental health services provided to deaf persons.

Bibliography for Chapter lV

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Chapter V

PRESCHOOL EDUCATION

Background of Problem

The need for language development and auditory training in hearing impaired children upon diagnosis or as soon thereafter as is feasible has been a recognized fact among educators of the deaf. In recent years educators of the deaf in New York State and the Temporary State Commission to Study and Investigate the Problems of the Deaf, among others, have urged initiation of programs in the State to provide children under three years of age with tutoring in speech, speech reading and auditory training; medical, psychological and social services; memory training; parental education and involvement. Such programs conducted on a day school basis, have been regarded as critical to the educational growth of the hearing impaired child both in language development and as a solution for later education problems.

During the past two years, seven of the ten schools for the deaf in the State, have sponsored pre-nursery programs during the regular school year and summer with funds made available through Federal legislation.

Current Approach

The Temporary State Commission to Study and Investigate the Problems of the Deaf through its legislative members introduced legislation providing educational programs for hearing impaired children under three years of age on January 23, 1968 (S-2131A) and again on January 22, 1969 (S-1825).

Although the urgent numerical need for such legislation created by the rubella epidemic of 1963-64 has to some extent diminished since the introduction of the above mentioned legislative bills, the Commission has again this year, with the cooperation of the New York State Department of Education, introduced legislation in this field (see Appendix K).

Introduction of the current legislative bill to provide educational services for deaf and hearing impaired children in the State below the age of three was urged again this year by the Commission after careful study. Based upon the undisputed fact of need for early training of deaf and hearing impaired children and the universal recognition of the benefits derived from such programs it was felt by the Commission that the State of New York should make such programs a permanent feature of the education of deaf and hearing impaired children in the State.

Further, the passage of the current legislative bill will enable the schools for the deaf in the State to utilize federal funds in other much needed areas, e.g. seriously emotionally disturbed educational programs and other special areas of physical impairment.

Utilization of federal funds to develop pre-nursery programs in the State has done much to establish the experience and benefits to be derived from such educational activity. However, the remoteness of federal funding and the attendant difficulties in securing the same has kept the number of participating facilities down thus limiting the experience and benefits of such programs to the larger metropolitan areas where the schools for the deaf are located. It is intended that the current commission sponsored legilative bill will expand the availability of pre-nursery programs to speech and hearing clinics and other facilities approved by the Department of Education throughout the State so that all of the deaf and hearing impaired children in the State will benefit therefrom.

It is anticipated that the Commission will devote more time to the broader field of education next year. Although preschool education was stressed this year, this should not be construed as disinterest on the part of the Commission regarding the areas of secondary school programs, vocational programs or adult education. The Commission's anticipated priorities for education next year are discussed in greater detail in the Recommendations and Future Direction section of this report.

Chapter VI

CARE OF THE AGED DEAF

Care of the aged deaf in this state has been one of the major areas of concern for the Temporary State Commission to Study and Investigate the Problems of the Deaf since the inception of the Commission. As previously reported to the Governor and the Legislature, the Commission has discovered a near total lack of programs and facilities in this State for the aged deaf. The situation continues to exist to the present date.

The Commission as well as other agencies for the deaf within the state have long recognized the need to develop care facilities for the aged deaf. At the minimum these programs should be designed to assist the aged deaf to rehabilitate themselves, and where possible, overcome the impact of their disabilities so as to attain some degree of self-dependency. In considering the prevalency of deafness or appreciable hearing loss in the aged and the profound impact upon the individual who is no longer able to communicate on a normal level, there would appear to be ample grounds upon which to justify continued concern and study in this area of the problems of the deaf.

The Commission, however, feels that before significant and comprehensive programs can be put forward for consideration, a means to establish the number and whereabouts of the aged deaf in the State must be created.

Thusfar, the Commission's studies in the area of aged deaf have been limited to local situations throughout the state and investigations into programs being instituted in other states. While attempting to determine if programs in sister states were adaptable to this state, the Commission found that in most instances the lack of any meaningful surveys or data on the subject throughout the other states severely frustrated most attempts to deal with the problem.

The Commission has now under consideration a plan for conducting a survey of aged deaf residing in state institutions as well as those receiving care in various municipal hospitals and agencies. The plan had been successfully implemented in Illinois and within a remarkable small budget setting.

It is the Commission's recommendation that study continue on ways and means to establish a meaningful survey on the extent of deafness among the aged citizens in the State and based upon those findings, attempt to establish programs designed to meet the required needs of this group on a state-wide basis.

Chapter VII

RECOMMENDATIONS AND FUTURE DIRECTION

The Commission feels that the 1969-70 fiscal year was profitable and rewarding in regard to investigation and research accomplished for the deaf and hearing impaired population of New York State. With the cooperation of research staff personnel, the Commission was able to realize the implementation and validation of many of its recommendations and to devote itself to the resolution of "priority problems." It is felt that this report reflects the concern and committment of the Commission to continue all efforts toward the development of legislation and ideas to better the condition of the deaf and hearing impaired persons throughout the State.

1970 Recommendations

Throughout this report solutions have been suggested to various problems affecting the deaf. It seems appropriate that these recommendations be summarized at this time for the sake of clarity and for easy reference. Thus the Commission respectfully submits the following recommendations for the review and consideration of the Governor and the Legislature:

1. The Commission drafted bill to license hearing aid dealers and fitters in New York State should be adopted to provide the consumer population with grievance recourse and to improve the quality and proficiency of hearing aid dealers.
2. Life and automobile insurance studies should be discontinued by the Commission. Study this year has uncovered no insurance company policy which suggests discrimination against deaf or hard-of-hearing persons.

3. All interested individuals, groups and agencies throughout the State should endorse and lend support to the Rubella Immunization Program in order that a major cause of deafness may be reduced and hopefully eliminated.
4. All interested and appropriate facilities should consider the benefits to be derived from an infant auditory screening program. Such programs should be offered as are possible in order that hearing defects may be detected and treated at the earliest possible age.
5. The Commission should undertake a survey to assess the number of deaf children in New York State who are in need of mental health services. This survey could best be accomplished by:
   a. writing the superintendents or heads of residental and day programs for deaf children to determine first, the number they were forced to drop from school during the last six years and, second, the number they had to refuse admission over this same period. If the superintendents will specify the number and reasons for dropping or dismissing, some idea of the mentally ill, mentally retarded and otherwise mentally handicapped persons will be available.
   b. the number of deaf children now in State Hospitals for the mentally ill and for the retarded and juvenile correctional institutions should be assessed by actual ward-by-ward census in these facilities by a person able to use the language of signs.
6. If the statistics obtained from the survey mentioned in recommendation number 5 above substantiate the belief that additional

facilities for the treatment of multiply handicapped deaf persons are needed in the State, then recommendations for the establishment of such facilities should be made by the Commission.

7. In order to effectively utilize existing staff and community services available for deaf persons, patients presently in hospitals for the mentally ill and mentally retarded should be grouped together. This approach would cost the State little and would provide the opportunity for rehabilitation to many deaf persons presently located in an anti-therapeutic setting.
8. In order to obtain some picture of the number of dependent deaf persons not yet institutionalized, not of school age and not functioning adequately, the Division of Vocational Rehabilitation should be asked about the number of deaf clients they have especially deemed non-feasible.
9. Summer training institutes for psychologists, psychiatrists, social workers, audiologists, etc. who see deaf children and adults should be conducted regularly. By orienting such professionals in key agencies to the behavior aspects of deafness, prevention and case finding as well as services in general would be greatly facilitated.
10. The Commission should investigate the feasibility of counselling and education courses for the parents of deaf children. The summer training institutes mentioned in recommendation number 9 above would be prerequisite for the provision of such counselling and education courses.
11. The Commission sponsored bill to provide educational services for deaf and hearing impaired children in the State below the

age of three should be adopted by the Legislature. Pre-nursery programs are necessary for the effective habilitation of young deaf children.

12. The Commission should undertake a careful and impartial study of the needs of deaf and hard-of-hearing high school students to ascertain the advisability of establishing accredited State high school programs for the deaf.
13. A survey to determine the number of aged deaf residing in State institutions and those receiving care in various municipal hospitals and agencies should be taken to determine the needs of this group on a state-wide basis. Based upon the findings of such a survey, the Commission should work with the appropriate agencies to design and establish programs applicable to the needs of this deaf group.
14. Consideration should be given to the benefits which might be gained from the licensing or certification of audiologists in New York State.

Future Direction

With the acquisition of research personnel, the Commission has been able to accomplish much more this year than in previous years. The arrangement whereby Commission members provide ideas and directions to a research staff which is capable of doing investigation and "footwork" has proved effective and efficient as evidenced by this year's report.

If extension of the Commission is granted for 1971, the Commission feels that it will be able to meet many more needs of the deaf and hearing impaired in the State. The Commission envisions establishing priorities in the areas of education, care of the aged and multiply handicapped and dependent deaf for 1971. Many of the specifics in these areas which will be researched have been mentioned in the recommendation section above.

In order to make more frequent contact with deaf persons and groups which represent the deaf, the Commission will endeavor to invite guest speakers to speak on various topics of concern to the deaf at future Commission meetings. It is also planned that Commission meetings during 1971 will be held in different cities throughout the State in order to make the Commission more accessible to deaf persons who find it difficult to travel any great distance.

The Commission will welcome any suggestions which might improve its communication with and its usefulness to the deaf and hard-of-hearing population of the State of New York.

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APPENDIX A

Act Which Established Commission

2

STATE OF NEW YORK

S. 436—D **Intro. A. 1207**
3rd Rdg. 160 **Print A. 1207, 2670, 4178, 6676, 6854**

SENATE — ASSEMBLY

(Prefiled)

January 4, 1967

IN SENATE—Introduced by Messrs. BRYDGES, HUGHES, GORDON, CONKLIN—read twice and ordered printed, and when printed to be committed to the Committee on Finance—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported favorably from said committee and committed to the Committee of the Whole, Committee of the Whole discharged, bill amended, ordered reprinted and recommitted to said Committee of the Whole—reported favorably from said committee, committed to the Committee of the Whole, ordered to a third reading, passed by Senate and Assembly and delivered to Governor, recalled from Governor, vote reconsidered, restored to third reading, amended and ordered reprinted retaining its place in the order of third reading—amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY—Introduced by Messrs. CEROSKY and TERRY—read once and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and committed to Committee on Rules—again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT

To amend chapter six hundred eighty-three of the laws of nineteen hundred sixty-six, entitled "An act creating a temporary state commission to study and investigate the problems of the deaf and making an appropriation for its expenses," in relation to increasing the membership of such temporary state commission and to continuing its existence until March thirty-first, nineteen hundred sixty-eight, and making an appropriation for its expenses

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections two and six of chapter six hundred eighty-three of the laws of nineteen hundred sixty-six, entitled "An act creating a temporary state commission to study and investigate the problems of the deaf and making an appropriation for its expenses," are hereby amended to read, respectively, as follows:

§ 2. Such commission shall consist of [three senators, to be appointed by the temporary president of the Senate, three members of the Assembly, to be appointed by the Speaker of the Assembly, and five persons] *fourteen members to be appointed as follows: four members to be appointed by the Temporary President of the Senate, of which number three shall be senators; four members to be appointed by the Speaker of the Assembly, of which number three shall be assemblymen; and six members* to be appointed by the Governor two of whom shall be deaf persons to be appointed from a list of not less than fifteen names to be submitted to the Governor by the Empire State Association of the Deaf, Inc. Vacancies occurring from any cause in the appointive membership of the commission shall be filled by the officer authorized to make the original appointments. The commission shall organize by the selection from its members of a chairman and a vice-chairman.

§ 6. The commission shall make a report of its findings and recommendations covering needs, plans and programs to the Governor and the Legislature on or before [February first] *March thirty-first,* nineteen hundred [sixty-seven] *sixty-eight.*

§ 2. The sum of fifteen thousand dollars ($15,000), or so much thereof as may be necessary, is hereby appropriated to the commission hereby continued and made immediately available for its expenses, including personal service, in carrying out the provisions of this act. Such moneys shall be made payable out of the state treasury after audit by and on the warrant of the comptroller upon vouchers certified or approved by the chairman or vice-chairman of the commission as prescribed by law.

§ 3. This act shall take effect immediately.

APPENDIX B

Act to Extend Commission through 1971

STATE OF NEW YORK

5079

IN ASSEMBLY

February 17, 1970

Introduced by Mr. CEROSKY—read once and referred to the Committee on Ways and Means

AN ACT

To amend chapter six hundred eighty-three of the laws of nineteen hundred sixty-six, entitled "An act creating a temporary state commission to study and investigate the problems of the deaf and making an appropriation for its expenses," in relation to continuing its existence until March thirty-first, nineteen hundred seventy-one, and making an appropriation for its expenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section six of chapter six hundred eighty-three of the laws of nineteen hundred sixty-six, entitled "An act creating a temporary state commission to study and investigate the problems of the deaf and making an appropriation for its expenses," as last amended by chapter seven hundred ten of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 6. The commission shall make a report of its findings and recommendations covering needs, plans and programs to the Governor and the Legislature on or before March thirty-first, nineteen hundred [sixty-nine] *seventy-one*.

§ 2. The sum of seventy-five thousand dollars ($75,000), or so much thereof as may be necessary, is hereby appropriated to the commission hereby continued and made immediately available for its expenses, including personal service, in carrying out the provisions of this act. Such moneys shall be made payable out of the state treasury after audit by and on the warrant of the comptroller upon vouchers certified or approved by the chairman or vice-chairman of the commission as prescribed by law.

§ 3. This act shall take effect immediately.

APPENDIX C

Minutes of Commission Meetings

TEMPORARY STATE COMMISSION TC

STUDY THE PROBLEMS OF THE DEAF

The eighteenth meeting of the Temporary State Commission to Study the Problems of the Deaf was called to order by Chairman Richard A. Cerosky at 10:15 a.m. on June 18, 1969, in the Assembly Parlor, State Capitol, Albany, New York. The members in attendance were: Honorable Richard A. Cerosky, Honorable Salvatore Grieco, Mrs. Alice B. Beardsley, Mr. Jerome Steinberg, Mr. Carlton Strail, Reverend Martin J. Hall, Mr. Fred McGrath, and Mr. Max Friedman. Staff in attendance were:

Mr. Stanley R. Benowitz, Staff Coordinator
Mr. Theodore Howes, Secretary to the Chairman
Dr. Dale E. Harro, Assistant Commissioner, N. Y. S. Dept. of Health
Mrs. Joan Gable, Administrative Assistant, N. Y. S. Dept. of Health
Mr. David C. Dempsey, General Counsel
Mrs. Eleanor Hack, Secretary to Staff Coordinator

Mr. Cerosky introduced Mr. David C. Dempsey, who will serve as the General Counsel for the Commission.

Mr. Steinberg extended condolences to Mr. Cerosky with regard to his recent loss on behalf of the Commission.

Mr. Cerosky: This Commission was operated by the Commission members as committee chairmen to investigate problems of the deaf and reporting back their findings. These findings were consolidated and put into a report. I thank Mr. Benowitz and Mrs. Gable for their work on this report on behalf of the whole Commission. I think we find ourselves in a position where this has been going on for three years seemingly with very little being accomplished. The Commission was well worth the effort; however, as far as accomplishing anything, I think we are still up in the air in this respect.

This year we must make some very serious determinations as to what form and shape to take. According to the Governor's letter we must accomplish something worthwhile this year. This year we must work on a full-scale basis permitting us to engage the necessary help and investigations. The Commission members should be the policy-setting body of this Commission. We should engage whatever help is required to study what we feel should be studied with these people giving us their findings. Our most important function is to introduce legislation to help the deaf people in the State. These are my thoughts on the type of operation for the Commission to embark on. What are your views? What do you feel we should do?

Mr. Friedman: I received a letter from the Governor in answer to my letter. The Governor has been very sympathetic and patient. Our work must be directed to make guidelines to keep on the Commission. The Governor said that we have accomplished something but I am impatient. I don't think we have done enough. Part of that stems from the hostility of some schools and some services but I think that has been changed. The schools realize that we are not going to tear their schools apart but rather to help them. One of my complaints is that we have no authority to make changes but only to recommend. So, we should plan a guideline and a program with the authority that it should have.

Mr. Cerosky: I must point out that one of the questions that confronts the Commission is whether or not this Commission should be made permanent or whether the work of this Commission should be under the responsibility of some department. This question is unresolved. It should be resolved shortly within the time of this Commission--1970. I think that we all feel we should accomplish more than we have, but in retrospect, if we have done nothing more, we have made the legislature aware of the problems of the deaf.

Mr. Howes: When we get legislation together which could help with the problem, there comes a request for a fiscal report. How much is it going to cost? We immediately come up against a brick wall because we don't know how much it will cost. Statistics are an important thing to us.

Doctor Harro: The Health Department used to keep statistics but they no longer do so. The Commission for the Blind still keeps statistics. Only in the last two years has the Federal government made money available for statistics.

Mr. Cerosky: This gives more reason why the Governor would like to abolish some commissions and get them under a department.

Discussion followed regarding the areas which should be studied:

1. High school for the deaf
2. Adult education
3. Multiply handicapped deaf persons

Reverend Hall: A factual study is needed in these areas to make recommendations. Because of the Commission's appropriations in the past, these studies could not be undertaken. It was felt that the Commission now has the money to undertake the job of research to gather statistics and make reports to back up our recommendations.

It was decided that an outside research organization was too costly and probably not feasible.

Mr. Cerosky: The Commission members should submit to Mr. Benowitz those areas which they feel should be investigated and researched as soon as possible. When we get these, the staff coordinator could start laying out the work to be done. Then we can decide whether to do this ourselves or get outside help.

Mr. Howes: One area of general interest is the Baby Bill--money to educate children under three. We had to provide a fiscal report--which was three hundred thousand dollars. This was just a guess. When it reached the Ways and Means Committee and Finance Committee they asked whether this figure was right or wrong.

Mr. Cerosky: Ted is right. We are going to have to substantiate our materials before any requests are going to be granted.

What are the specific ingredients if the Baby Bill is to be passed? This is what we have to do. When we introduce this legislation our Commission will have to be able to substantiate it.

Discussion followed on how to get statistics.

It was mentioned that we could get more specific information by proper staffing and working within the framework of the State agencies. Researching with the other state agencies, getting information, and submitting it to the Commission.

Mr. Cerosky: One of the ares which should be our concern are those deaf persons that are unable to take care of themselves, that are beyond the age of education or those who have no place to go, they don't know what to do. It appears the only place for this individual to go is a mental institution. By far this individual is not a mental case but has a lack of communication. How many people in the State of New York do we have facing this problem, where are they, is that where they should be? These are the things we have got to find out so that when we submit a proposal we can substantiate it. I think we can best do this through State agencies.

Staffing: Mr. Benowitz will act as staff coordinator. Mr. Cerosky would work with Mr. Benowitz and Doctor Harro. As soon as it is known what research is needed, we can decide what kind of staff we need. Use of college students was suggested.

Reverend Hall: It was mentioned that when we have approached State agencies in the past for information they said they did not have enough staff to get this information. We are also understaffed and if we sent naive people (such as college students) into State agencies they are going to come out with this information without any experienced knowledge to pick out what information is more important than others.

It was also suggested that maybe we could import some people who are experienced in a certain area who could go over the statistics we have gathered and they could give us their opinion on whether the information is enough, or whether more information is needed, and how to put it all together to make a report.

Reverend Hall: We need statistics that are professionally arrived at. We are not considered professional people. We have to have the information given to us by people who are accepted by people in their own field--a professional fact finding agency. Then we would be able to say that this is something arrived at by professional people in this field and it is valid.

Mrs. Gable: She agreed with Father Hall in a way. She said Mr. Benowitz would work with someone on a professional level to find out where to get the needed information. Then we could get a college student to gather the statistics and hire professional people on a per diem basis to put the statistics together.

Mr. Cerosky: We have some of the finest professionals in New York State agencies. I think we can get their judgments or opinions. The only fear I have about contracting an outside agency is that it is a binding contract. We may find that the information gathered is not what we are looking for. I feel we need the freedom.

Reverend Hall: We could ask the professional what needs to be done, then gather the information and then have the professional put together the information into a knowledgeable report. I would like to be able to get together with some knowledgeable person and find out if the information gathered is worth anything from a professional standpoint.

It was basically agreed to rely on State agencies involved and approach them for the information needed. It was further agreed to send a college student to get the statistics needed; then call on a professional to decide if the information is enough and put it together in the right format so that we will have a substantive report.

Discussion followed on whether Mr. Benowitz will work full time.

Mr. Cerosky: The first month would probably be quite heavy for Stan. There is no reason why the investigators cannot compile information and send a report to the Staff Coordinator. Most of the Commission members would not be able to spend one day a week working for the Commission. I realize that the members are not being paid and it is highly commendable that they do it.

Mr. Benowitz: I had information I mentioned to the former chairman and nothing was done. The information is available all over the place. It is just a matter of having someone get it. I am sure if you decide what you want, I can get the information, find out where to get it, and put it together. We are becoming widely known. It all boils down to --What do we want to know? I can get the information and send it to the members before the next meeting so that the members would not come in cold.

Mr. Friedman mentioned something about NYU taking a survey of deaf drivers competency and insurance company practices. If the proposal goes through, the research will be government funded. He will keep Stan informed about it. Someone asked if it would be done in New York State or the United States and the answer was that it would cover New York people especially.

Mr. Benowitz: The Model Secondary School contract has been awarded to Gallaudet College. There are many phases of the study by NACED where we can get information for our purposes.

Mr. Friedman: The Model Secondary School Act, or the model high school in Washington, D.C., is federally funded. If we could get one here, then we should investigate this possibility.

The Commission members asked Stan to contact the proper authorities and investigate getting the regional high school set up within the State. Mr. Friedman said he is not sure whether there are enough high school deaf persons in New York State to warrant establishing a high school. Furthermore, he didn't think we could get the staff for the school but it would be more feasible if it is funded as a regional high school.

Mr. Benowitz: Getting information from the Model Secondary School Act would aid us in what has to be done.

Mr. Friedman: At the time of that survey by NACED, Doctor Levine didn't have the staff to do a similar one for New York. Now, we have a Ph.D. and Director of Research. If you want a survey, write a letter and they may be able to take it up now. Mr. Cerosky asked if this survey would be made at their expense. Answer: Their budget is limited. Mr. Benowitz commented that he was sure the cost could be shared to some extent.

Mr. Cerosky: Write a letter and inquire as to the possibility of this survey and what expenses and if so, would it be a shared expense.

Reverend Hall: Also inquire about members of their staff being available on a per diem basis.

Lunch break at 11:50 a.m.

Meeting resumed at 1:30 p.m.

Discussion was started regarding a vacancy on the Commission.

Mr. Cerosky: I have received letters from two persons interested in serving on the Commission. The appointment will be made by the Governor. I have not forwarded the letters to the Governor yet in order to give the members an opportunity to submit the names of anyone they think would be beneficial to be on the Commission. If the members would send me a letter with the person's name and qualifications as soon as possible, I can get them to the Governor's office so that he can choose someone right away. Perhaps before the next meeting someone will have been appointed. So far, the Senate has not appointed the members from the Senate to the Commission.

There was discussion regarding Mr. Steinberg's appointment and it was decided that he should write a letter to the Governor to request his reappointment to the Commission.

Mr. Cerosky: It was my feeling that we could accomplish a great deal more if we worked on creating a staff, getting the necessary information, and preparing reports for our meetings and preparing some sort of an agenda which would be mailed out prior to our meetings. Then our meetings would be more constructive. In order to do this we would perhaps have fewer meetings during the year. I would recommend that we schedule our meetings once every two months to give ample time to prepare for them. I think this would work better than meeting once a month. We would have fewer meetings but would get more work done.

Mr. Grieco stated that he preferred monthly meetings.

Mr. Howes suggested setting up the meetings for every two months but to leave it to the situation at hand in case we needed a meeting more often. It was decided the next meeting would be Thursday, September 4, 1969, in Albany.

Mr. Cerosky reminded the members to submit their suggestions on what areas they thought should be given consideration for research.

There was some discussion on noise pollution. It was brought out that the State Health Department is at the present time studying noise pollution.

Doctor Harro: In the last two years some very significant advances have been made in preventing deafness.

1. Preventing the Rh baby from being born with jaundice causing deafness.

2. A German Measles vaccine has just been licensed.

3. The MCH Bureau has developed a Manual for Testing--Auditory Screening for Infants.

To recognize very early in life those children who are deaf or who have a hearing problem, we are going to concentrate on selling this ASI program at the local health department level and to the hospitals as well. The Commission should take credit for starting this. Doctor Harro will get this Manual for distribution to the Commission members when it is ready within the next month.

There was a brief discussion as to whether there should be a public release on the new screening program for infants. It was agreed that Dr. Selig H. Katz, Director of the Bureau of Maternal and Child Health, and the Commission staff would send out such press releases simultaneously.

Mr. Cerosky to Doctor Harro: We are gratified to hear this and hope you will continue to work with us.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,
Mrs. Eleanor Hack

TEMPORARY STATE COMMISSION TO

STUDY THE PROBLEMS OF THE DEAF

The nineteenth meeting of the Temporary State Commission to Study the Problems of the Deaf was called to order by Chairman Richard A. Cerosky at 10:20 A. M. on September 4, 1969, in the State Capitol's Assembly Parlor, Albany, N. Y. Members and staff in attendance were:

Hon. Salvatore J. Grieco
Mrs. Alice B. Beardsley
Mr. Carlton B. Strail
Mr. Frederick O. McGrath
Mr. Max Friedman
Hon. Jess J. Present
Sister Nora Letourneau
Rev. Martin J. Hall
Stanley R. Benowitz, Staff Coordinator
Mrs. Joan C. Gable, Administrative Assistant, N. Y. S. Dept. of Health
Dr. N. G. Alexiou, Associate Director, N. Y. S. Dept. of Health
Mr. David C. Dempsey, Counsel
Mr. Robert L. Marinelli, Assistant Counsel
Mr. Robert O. Morris, Research Assistant
Mr. Herbert Malyak, "
Mr. Bertrand H. Hoak, "
Miss Carol Skolnik, Research Clerk
Miss Elizabeth H. O'Brien, Interpreter
Mrs. Eleanor F. Conboy, Secretary to Staff Coordinator

Chairman Cerosky introduced the new staff members of the Commission and the new secretary for the Staff Coordinator. It was then announced that Senators Conklin, Paterson, and Present were appointed to serve as members of the Commission for the year 1969-1970.

Since all members had received copies of reports on areas which had been researched by the staff, Mr. Cerosky asked the Commission to act on the results of the work done.

Miss Skolnik gave a brief resume of her report and offered to answer any questions relating to the study done thus far on the insurance field.

Mr. Grieco brought attention to the numerous complaints insofar which seemed to contradict the general statement in the report whereby the automobile insurance company stated there was no policy by which it may refuse to underwrite because of deafness alone. Thus, he felt something should be done in the area where there was question on the refusal of some companies which have been denying automobile insurance to those afflicted with some degree of deafness.

Mr. Cerosky noted from the report that a majority of the companies stated that they do write insurance for deaf persons - life and automobile - at the same premium rates as for hearing persons.

Sister Nora cautioned all to be careful in generalizing the percentages as indicated from the replies to the questionnaire lest one-sided answers delude the Commission especially those being beneficial to whomever was concerned. Father Hall suggested that the deaf be made knowledgeable of the companies on the National Association for the Deaf list since approach to them would be positive.

Mr. Strail raised the question concerning the poor showing of deaf drivers as stated by a certain company. Mr. Friedman and Miss Skolnik explained that it resulted from the company's acceptance of all applicants despite their previous driving records. It was mentioned that this company had modified its policy and it was going to screen future applications before underwriting coverage for them as is generally practiced.

Mr. Grieco reviewed a particular individual example of a person in dire need of coverage. Chairman Cerosky reiterated this Commission had to do with all people afflicted with deafness - not individual cases. Extenuating circumstances had to be based not on a few but numerous instances. Then Mr. Cerosky made reference to a certain report by a Lowell Myers, deaf attorney-at-law, in Chicago. Miss Skolnik was delegated to correspond with Mr. Myers in this aspect. Mrs. Gable suggested a follow-up, either by mail or telephone, so that responses from non-answering companies or further clarification on some vague or incomplete answers may be had. Miss Skolnik agreed to do this with help from Mr. Dempsey.

Senator Present suggested, that in view of all the data available at present was rather uninformative, a related study be made on insurance companies by asking through the press media whether or not deaf people were being discriminated against. A request could be made of all who felt they were being discriminated against to write a letter to the Commission stating facts. This suggestion was accepted and Chairman Cerosky instructed the staff to evaluate the responses by checking with the Motor Vehicle Department so that a fair and unbiased assessment may be had.

There was very little discussion about the life insurance business since there was minimal evidence of gross discrimination.

The Commission then went over the report on the 'totally dependent deaf'. It was pointed out there was very little done in the area of identifying or locating deaf persons in the state other than those in attendance in a school for the deaf or a program for the deaf in schools throughout the State. In addition, there was the need for concentrated energies for the creation of effective programs for habilitation or rehabilitation of the dependent deaf.

Mr. Cerosky stated that the report contained two different populations - the mentally retarded deaf and those who were mentally ill. The real concern was to find out what the State was doing for the deaf person beyond the educational age and also what facilities were available for that population. He suggested visitations to the hospitals might be necessary to find out what the problems were and what was being done. Mr. Benowitz reiterated that there was no statewide planning in this area of need and only a handful did provide a program other than the usual individual cases in the general existing programs for all those in the State facilities.

Father Hall questioned how many facilities were programmed to receive the mentally retarded/ill deaf children. He stated that the existing schools for the deaf did not believe that the needs of such children should be their responsibility. Mr. Benowitz replied that it was almost non-existent. Mr. Grieco added that not much was being done at the Rockland State Hospital Unit for the Deaf since it was geared only for a total of 30 persons at any given time.

There was some discussion about the few State facilities which were concerned about the deaf patients and their attempts to develop effective habilitative services for those deaf persons. Mr. Friedman pointed out that larger staffs be available but Father Hall questioned this and raised the question whether additional programs such as the Rockland Unit be established in other state hospitals in certain regions of the State.

Mr. Dempsey was delegated to research the State law on the hearing screening in all school districts, especially the one which exempted the Big Six cities from reporting hearing losses in the school age populations. He was also asked to find out what department was not carrying out the intent of the law and write to see that it was being followed.

Mr. Benowitz was asked to clarify the source and the meaning of the figures used in the report. He stated he used the known number of children in existing school programs and the percentage formula of Dr. Frisinas 1955 Study to determine the number of mentally retarded deaf children. His purpose was to project the number which would eventually be placed in the State institutions. He added that further research would be done and a supplemental report would be made before the next Commission meeting. After some further discussion, it was agreed to also develop all information on the older deaf people for reconsideration.

The Commission recessed at 12:15 for lunch and reconvened at 1:30 P. M.

Mrs. Beardsley mentioned that Assemblyman Grieco was awarded a citation for his services and interest for the deaf citizens of New York State by the Convention of the Empire State Association for the Deaf held in Buffalo.

There was a brief discussion on legislation and the Commission agreed to Mr. Strail's request for additional information regarding the Assembly Bill #933 which resulted from the 1969 legislative session.

In updating the Education report, Mr. Benowitz told of a staff addition in the Bureau of Physically Handicapped Children in the person of Dr. Beatrice Jacoby. Her job was primarily in the area of the pre-school deaf children. Contact is to be made with her in relation to the already documented problems of this program in the State. Chairman Cerosky stated that the Commission should not take a stand regarding this area until further information was available.

Sister Nora mentioned that besides the pre-school education program for children below the age of three years, the Commission should concern itself with the multiply handicapped child who was also deaf. It was felt that eventually the existing schools for the deaf would have to have some program for this disadvantaged group because of the present educational trends. During the discussion it was learned that Mr. Marinelli was working on the details of the Commission's so-called "Baby Bill."

Sister Nora agreed to keep the Commission up to date in the area of organization of a State Association of parents and other related persons of multiply handicapped deaf children for the perusal of establishing a special program for such children in the aforementioned schools.

The subject of vocational rehabilitation followed and the main discourse was on the recommendations proposed by the State-Wide Planning Commission of the Division of Vocational Rehabilitation. It was learned the Governor's office had the final draft of this report and it was more or less agreed to wait until copies were available to the Commission before any action, if any, would take place. Part of the discussion centered on the Division's request for a special consultant for the deaf services on a statewide basis. Concern was expressed by the majority on the type of person for that position and there was some question on what the requirements/qualifications would be for that position as it was generally felt that such a person should be knowledgeable of all the problems of the deaf at all levels.

There was little comment on the report of the Department of Labor since there was lack of evidence at present to indicate a real need for that type of services to be extended. However, it was agreed that efforts be continued to ascertain whether there is an unknown need for the expansion of the Department of Labor's only program which now exists in the New York City area.

Chairman Cerosky mentioned that there was still a great deal of researching yet to be done before any concrete recommendations could be made by the Commission. He asked for comments on the techniques as adopted by the present staff for research so that decision could be arrived at whether or not to continue this program.

Mr. McGrath stated he liked the way things were being done by the staff and liked the idea of receiving interim reports and newsletters before each meeting. The others were in general agreement.

Discussion centered on the future areas of research and what would go into the final report. Mr. Cerosky reiterated that anything could be said and there were no specifics as to what may or may not be included in the final report.

It was announced that the next Commission meeting would be held on November 6, 1969, in the Assembly Parlor of the Capitol, in Albany.

Respectfully submitted
Eleanor F. Conboy

TEMPORARY STATE COMMISSION TO
STUDY THE PROBLEMS OF THE DEAF

The twentieth meeting of the Temporary State Commission to Study the Problems of the Deaf was called to order by Chairman Richard A. Cerosky at 10:25 A. M. on November 6, 1969, in the State Capitol's Assembly Parlor, Albany, N. Y. Members and staff in attendance were:

Mrs. Alice B. Beardsley
Mr. Carlton B. Strail
Mr. Frederick O. McGrath
Mr. Max Friedman
Hon. Eugene Levy
Hon. Jess J. Present
Sister Nora Letourneau
Rev. Martin J. Hall
Mr. Stanley R. Benowitz, Staff Coordinator
Mrs. Joan C. Gable, Adm. Asst., N. Y. S. Dept. of Health
Dr. D. E. Harro, Asst. Commissioner, N. Y. S. Dept. of Health
Mr. Robert L. Marinelli, Assistant Counsel
Mr. Robert O. Morris, Research Assistant
Mr. Herbert Malyak, "
Mr. Bertrand H. Hoak, "
Miss Cynthia Goulder, Research Clerk
Mrs. Phyllis Kelly, Research Assistant
Mr. Ted Howes, Secretary to the Chairman
Mr. Richard Corcoran, Managing Editor, Empire State Asso. of the Deaf
Dr. John D. Rainer, Rockland State Hospital
Mrs. Eleanor F. Conboy, Secretary to Staff Coordinator
Mrs. Marjorie Clere, Interpreter

Chairman Cerosky introduced Miss Cynthia Goulder, a Manhattanville college student who is a Research Clerk for the Commission in Mr. Cerosky's office and Mrs. Phyllis Kelly, Buffalo, who is to work as a Research Assistant in the area of multiply handicapped deaf.

Mr. Cerosky expressed the regrets of Assemblyman Grieco who was unable to attend the meeting. He announced Dr. Rainer, who is primarily connected with the operation of the unit at Rockland State, was invited to talk at the meeting.

On the previous Sunday, Mr. Cerosky had given a talk to a group of deaf people in New York City. Max Friedman, a Commission member, said this group gained a basic understanding of what work in the Commission involved, and he believed there should be more talks. Mr. Cerosky said he would be glad to fit any future talks into his schedule.

Re: Hearing Aids. Mr. Benowitz asked Bob Morris to go into detail relative to the research he did in this area. It was pointed out that the report issued beforehand generally spoke for itself. He presented some advertised material which solicited business by mail. Mr. Friedman added another ad which claimed to aid those with nerve deafness.

Mr. Cerosky advised that early in October some legislators had a visit from a New York University professor in audiology in regard to their current work re hard of hearing persons and hearing aids. The professor claimed three cases of deaf adults who could not possibly hear (except by surgery) and were sold hearing aids which they should not have bought.

At this point, Mr. Morris stated that there was a definite need of licensing the hearing aid industry. He asked the Commission members to consider Mr. Dempsey's draft of a bill calling for such a licensure in New York State. The members were asked to express their thoughts and/or feelings about the drafted bill. In the course of discussion re the proposed legislation, Dr. Harro defined what nerve deafness was; Mr. Morris advised that the hearing aid industry expressed an interest in participating; Rev. Hall questioned the administration of such a bill should it be enacted. At Chairman Cerosky's suggestion, the Commission agreed to have two public hearings so as to be able to arrive at the type of bill which would be fair and effective. A motion was made by Mrs. Beardsley (Rev. Hall) that we file the drafted bill and conduct hearings. Carried. The group also voted to have a hearing in Rochester and one in New York City some time in December. The staff was asked to arrange for such hearings and inform interested parties of such hearings along with a copy of the proposed bill as drafted.

The question as to whether or not a new agency/department be created to administer to the bill should it become law was raised again. Others expressed views that the Commission should be concerned in filing a more comprehensive piece of legislation to administer to the needs of the deaf. Discussion ensued accordingly. It was then agreed that this topic be placed on the agenda of the Commission's next meeting.

The Automobile Insurance up-dated report followed and Mr. Malyak stated that we were in receipt of many answers but no statistical information. Mr. Howes asked what evidence there was to substantiate the alleged unfairness to the deaf drivers by insurance companies. Mr. Friedman stated that the New York University was planning a research to evaluate the competency of the deaf driver and he suggested that the Commission work with the University in that study so that relevant data would be collected. Some general discussion followed and no action was taken other than asking the staff to investigate further the charge whether or not the deaf drivers were being unduly assessed high premium rates.

Lunch recess was announced at 12:15 P. M.

At the resumption of the meeting Mr. Cerosky introduced Dr. John D. Rainer of the Rockland State Hospital Unit for the Deaf. The purpose of Dr. Rainer's appearance before the Commission and its staff was to orient the group on the present New York State's mental health services program. After the thorough briefing, Mr. Cerosky asked Dr. Rainer what recommendations he would have for the Commission in its recommendations for New York State in the alleviation of the problems of the deaf.

Dr. Rainer recommended the following:

1. Creation of a mental health facility for those deaf children between the ages of 4 - 16.
2. Establishment of sheltered workshops across the state for deaf persons who cannot work under pressure.

3. The establishment of a Home with a special trained staff for the mentally retarded deaf.
4. Have teams of mental health personnel to work in schools for screening and therapeutic services.

Mr. Levy asked if present testing equipment was available for other institutions. Dr. Rainer reiterated that it was not equipment which was needed but rather personnel that was lacking especially in the multiply handicapped children.

To make their transportation home Dr. Rainer was excused as were Mrs. Kelly and Mr. Marinelli.

Mr. Benowitz was called upon to make the report on Mental Health. He stated that in the report were recommendations for the Commissioners to consider. The report also pointed out the lack of census data at each hospital due to the inability to define a deaf patient universally. Despite the present official 240 figure, it was stressed that that statistic dealt with only adults and there was a pressing need to specify those below the age of 18 years. Consequently, it was suggested that Dr. McCay Vernon, professor at the Western Maryland College, be asked to appear before the Commission at its next meeting. Prior to coming to Western Maryland, he had a major role in the mental health program for the deaf at the Michael Reese Hospital, in Chicago, with Dr. Roy R. Grinker.

It was decided to withhold any action in this area of mental health until after Dr. Vernon appears before the Commission.

Re: Pre-school deaf children. Dr. Harro spoke briefly of his department's program for early detection of deafness in infants. He stated that to date 9 out of 36 well baby clinics have responded to the utilization of the recently issued manual for the detection of hearing loss in infants. Mrs. Beardsley added that a registry of deaf babies was being established in Rochester by the Strong Memorial Hospital staff. She added that there was a great problem - once a deaf baby is detected, services/programs were almost non-existent or they were not known to exist. Thus, there was a real need for parent education.

It was decided that the Department of Education personnel be contacted for further deliberations before the Commission would undertake any actions. A recommendation was made by Rev. Hall that the Commission ask for a written statement on the proposed legislation dealing with the pre 'pre-school' deaf children.

It was also decided that all Commissioners be at the upcoming hearings in New York and Rochester. The tentative dates for December were:

12/ 4 - 1st hearing
12/11 - 2nd hearing
12/18 - Commission meeting.

Mrs. Beardsley (Present) moved to adjourn. Carried. Chairman Cerosky adjourned the meeting at 4 o'clock.

Respectfully submitted
Eleanor F. Conboy

TEMPORARY STATE COMMISSION TO

STUDY THE PROBLEMS OF THE DEAF

The twenty-first meeting of the Temporary State Commission to Study the Problems of the Deaf was called to order by Chairman Richard A. Cerosky, at 10:15 A. M., on January 21, 1970, in the State Education Department's Conference Room, 772, Albany, N. Y. Members and staff in attendance were:

Mrs. Alice Beardsley
Mr. Salvatore Grieco
Sister Nora Letourneau
Mr. Carlton B. Strail
Mr. Stanley R. Benowitz, Staff Coordinator
Mr. David C. Dempsey, Counsel
Mr. Robert L. Marinelli, Assistant Counsel
Mr. Bertrand H. Hoak
Mr. Theodore Howes
Mr. Herbert Malyak
Mr. Robert O. Morris
Dr. D. E. Harro, Director, N. Y. S. Dept. of Health
Dr. McCay Vernon, Consultant
Mrs. Marjorie Clere, Interpreter
Mrs. Eleanor F. Conboy, Secretary to Staff Coordinator

Mr. Cerosky opened the meeting by extending his appreciation and thanks to the Commission members and staff who attended and participated in the two public hearings on our Bill for the Licensing of Hearing Aid Dealers in New York State. He remarked the hearings were well attended and everything went along smoothly and the remarks were good.

Mr. Cerosky brought up the subject of the Deaf Olympics. He stated he received a letter about the Winter Deaf Olympics to be held in Europe and they were looking for a place to hold them in the United States. The New York State Commerce Department has been contacted re: the possibility of working something out to host the Winter Games in New York. Mr. Cerosky said the Chamber was interested and would be working on it.

Following the opening remarks comments and suggestions were sought in reviewing the Licensing of Hearing Aid Dealers Bill. Amendments to the Bill were as follows:

On Page 2 - the question was raised as to the definition of the "Audiologist" and "Otolaryngologist". There was discussion as to whether the audiologist be certified by the ASAH? There are presently 40 such Certified Audiologists in New York State. Dr. Harro is to get the definitions for Mr. Dempsey of various terms. It was agreed the definitions of deafness would be those used in Medicaid and Medicare.

Page 2 - Line 21 - "improving or correcting" - leave language as is.

Page 3 - Line 2 - recommendation that we distinctly reserve this area for Otolaryngologists, Audiologists and Otologists to test.

Dr. Harro raised the question as to the kind of services an Audiologist affords the patient - a Fitter affords the patient? This was explained by Sr. Nora.

Mr. Morris said this sentence is not found in the majority of other License bills. It was decided to delete the sentence starting on Line 2 - "A dealer", to the end of sentence "hard-of-hearing." - Line 4.

Page 4 - Line 8 - The make-up of the Board of Examiners was discussed and it was agreed by the Commission to have a 9 member board - 5 hearing aid dealers, 2 audiologists and 2 otolaryngologists. It was felt the Commission could ask the hearing aid dealers for suggested names. This also was agreeable to the Commission.

Dr. Harro commented on eliminating fraudulent acts and raised the question - Qualify clinical competency? He pointed out as to himself - today he is a staff member - at the last hearing a Commissioner of Health.

Mr. Morris remarked relative to a provision in bill - working under someone who had some degree of technical competence.

Mr. Cerosky stated everyone who testified at the hearings opened their statements with the belief hearing aid dealers should be licensed.

Mr. Morris questioned the possibility of incorporating a statement of legislative intent. (This was ruled out).

At this point - 11:15 Mr. Cerosky and Mr. Grieco had to leave for the Assembly. Mrs. Beardsley chaired the meeting during Mr. Cerosky's absence.

Pages 5 and 6 - no changes.

Page 7 - no change.

Page 8 - Lines 3, 4 and 5 - Ask that word "audiologist" be added with "doctor" and "clinic". Dr. Harro suggested "surgeon" be removed and put in "physician or audiologist".

Page 9 - Lines, 8, 9, 10 - Require that children have a prescription from a duly licensed physician before obtaining a hearing aid. Eliminate age requirement of 16 and use "of any minor patient by state law."

Page 11 - Line 27 - "free of contagious or infectious disease" should be stricken out. Use "majority" instead of "21".

Page 12 - Eliminate Lines 18, 19 and 20. Also last Line

Page 13 - Line 1 - delete "in writing and" and "other" in Line 2.

- " - Line 10 - change to read "at least twice" instead of "four times".

Page 13 - Line 23 - Change "twenty-one years" to "attained majority as defined by State Law."

Page 14 - Change to conform to Page 13.

The meeting was recessed for lunch at 12:15 resumed at 1:50 P. M.

Mr. Cerosky introduced Dr McCay Vernon, of the Department of Psychology, Western Maryland College. Dr. Vernon requested that questions be raised any time during his report. He stated a significant amount can be done to improve the plight of the deaf people and the following was his report:

Certain general considerations underlie specific recommendations. These are as follows:

1. A significant improvement can be made in services to deaf mentally ill and deaf mentally retarded patients at little or no cost to the State of New York. However, to provide deaf persons services equivalent to those provided the hearing additional funds will be required.

2. The following conditions will increase the number of deaf persons needing education and rehabilitational services:

    a. The rubella epidemic of 1963-1965 doubled to quadrupled the incidence of deafness for these years. The anticipated 1970-1971 epidemic will further compound the problem.

    b. The survival rate for premature infants has been increased. A disproportionate number of these children are deaf. Many of them and many of the rubella children are multiply handicapped (Vernon, 1969).

    c. The New York study of Rainer and Altshuler (1963) indicated that 87.5 percent of deaf persons are employed in manual labor of various levels as contrasted to less than half the hearing population. Also, over half are in manufacturing as contrasted to one fourth of the general population.

       As manual skills and manufacturing are areas hardest hit by automation, the rates of unemployment for deaf people are rising drastically (Moores, 1969). The stress of this will add to mental health, education, and rehabilitation needs.

    d. The problems of urban school systems are resulting in an increasing rate of illiteracy among deaf youth which compounds mental health and rehabilitation needs.

3. The shortage of competent professional persons in the field of deafness is so great that plans for services for deaf persons should be centralized as best possible to assure maximally efficient use of those available.

4. The records of residential schools, rehabilitation programs, and mental health services at Rockland all indicate clearly that money put into programs in deafness has historically been an investment not an expense.

5. The available information on the needs of the deaf in New York State, the overlapping of certain services, the duplication of others, etc., illustrate the need for a permanent central commission responsible for the needs of deaf persons.

6. The mental health, rehabilitative, and education needs of the deaf are such that efforts to treat them as non deaf people are treated, without adjustments to their unique communication problems, are ineffective and wasteful.

Specific Recommendations

I. The recommendation of Dr. John Rainer that mental health services be provided deaf children deserves the highest priority. No therapeutic services are now available for these children. Relevant to this need the actual numbers of such youth could be assessed by:

a. Writing the superintendents or heads of all residential and day programs for deaf children to determine first, the number they were forced to drop from school during the last 6 years and, second, the number they had to refuse admission over this same period. If they will specify the number and the reasons for dropping or dismissing, some idea of the number of mentally ill, mentally retarded, and otherwise multiply handicapped will be available.

b. The number of deaf children now in state hospitals for the mentally ill and for the retarded and juvenile correctional institutions should be assessed by actual ward by ward census in these facilities by a person able to use the language of signs.

c. In establishing this facility and others for deaf persons, thought should be given to:

1) Should they be units in existing facilities,

2) Should they serve a variety of types of deaf persons (mentally ill, mentally retarded, multiply handicapped, aged, dependent, etc.),

3) Can they be geographically located in terms of available services and population distribution,

4) Should they be on or near the campuses of existing schools for deaf children.

II. Dr. John Rainer's second recommendation to the Commission on November, 1969, that sheltered workshops be established also deserves strong support. These should offer residential and day care. Considerations described in recommendation I, c. above would apply here also.

III. The need to serve the mentally retarded deaf which Dr. Rainer made recommendations for is important, but does not assume the priority of recommendations I and II because it is more a custodial than a rehabilitative program. Once again the issue of whether these patients should be grouped in units in existing facilities, all treated in a separate free standing facility for the mentally retarded deaf, or treated in a facility serving deaf persons of many different kinds of disability including mental illness must be resolved. Rubella and prematurity will increase the number of mentally retarded deaf needing care in the near future.

IV. The use of a mental health team to screen and diagnose mental health problems in schools is of value only if services for identified cases are to be made available.

V. A census of deaf persons in state institutions including hospitals and correctional facilities is essential. Data obtained thus far is out dated and/or imcomplete. As previously mentioned in I. b., an adequate census can only be obtained quickly and at reasonable cost if a person skilled in manual communication makes a 'unit by unit' check in all institutions and:

a. Talks to ward attendants to get the names of patients who act as though they may be deaf,

b. Interviews all these patients to see if they know sign language or if they give other clear evidence of deafness,

c. In doubtful cases the records of the patient should be read for identifying facts.

The differential diagnoses of whether a patient is deaf, autistic, schizophrenic, brain damaged, or retarded is difficult to make in many cases. The above method is a practical approach and a workable overall method to obtain such a census.

VI. Patients presently in hospitals for the mentally ill and mentally retarded should be grouped together. This would cost little or nothing as these people are presently in hospitals. However, instead of their present setting of anti-therapeutic isolation they would be able to communicate with one another; staff would learn manual communication; and most importantly, existing community services could be effectively utilized. For example, the Division of Vocational Rehabilitation counselors, clergymen, the deaf community and others could effectively rehabilitate some of these persons if they were grouped and in a milieu with other deaf people. At present, deaf patients are so scattered and isolated that this is not possible.

VII. In order to obtain some picture of the number of "dependent" deaf persons not institutionalized yet; not of school age; and not functioning adequately, the Division of Vocational Rehabilitation should be asked about the number of deaf clients they have, especially those deemed "non-feasible."

VIII. The present Commission on the Problems of the Deaf should be made permanent and be given authority to act in coordinating services and meeting needs of deaf people.

IX. Summer training institutes for psychologists, psychiatrists, social workers, audiologists, etc. who see deaf children and adults should be conducted regularly. By orienting such professionals in key agencies to the behavior aspects of deafness, prevention and case finding as well as services in general would be greatly facilitated.

X. In conjunction with the strong emphasis on the early identification of deaf children there is need for counseling and education of the parents of these children. Otherwise identification not of any great value. This counseling of parents is a major preventive step in terms of later mental and educative problems. Institutes and programs as described in number IX above would be needed to prepare counselors for this work.

XI. Introduction of total'oral-manual' communication into all programs from preschool on up would be the least expensive and the most effective single step to prevent mental health problems and increase educational achievement (Grinker, 1969). At present 30 percent of deaf school leavers are illiterate; only 60 percent achieve a fifth grade level; and only 5 percent are 10th grade or above (McClure, 1966).

Dr. Vernon said deaf persons would strongly resent being situated in a welfare type situation. They want effective rehabilitation in order to support themselves. Mr. Cerosky commented on the fact that the deaf people were proud individuals who wanted to accomplish fully in life. Therefore, they were asking for a Commission to insure them of that inalienable right. Dr. Vernon again reiterated that the money spent on services for the deaf people is an investment. Mr. Cerosky thanked Dr. Vernon for his appearance and report which enlightened all those present.

Before the Commission turned back to the licensing bill for changes, there was discussion which centered on as to which Department would be the one to administer the functions should the bill become law. It was decided the bill would be discussed with both the State and Education Departments.

Then the Commission turned back to the licensing bill:

Page 16 - Stagger the expiration date on a 2 year basis.

No further changes were advanced for the bill.

Baby Bill:

Mr. Marinelli was asked to comment on the Baby Bill. He said the urgency for the baby bill was no longer there. However, the Commission should try to get it through the legislature again this year. He had taken last year's bill and made changes which the Education Department suggested.

Mr. Marinelli stated that it was desired to have this law specifically spell out that in this program all students under three be on a day care basis. It was also stated that the bill should provide expenses at approved institution, not just for transportation. The big change would be that the Commission of Education would only approve the expenses for children under three provided that student went to a school nearest his home.

Therefore, Mr. Hoak and Mr. Marinelli recommended that we introduce this bill. Mr. Cerosky advised the bill be drawn up and that all legislators of the Commission be put on the bill.

Insurance Problem

Mr. Malyak gave a report on insurance.

In connection with the news release there were eight responses which did not reveal very much at this stage. As a follow-up to the news release, a questionnaire had been sent for the listing amount of coverage, and premiums paid. With this information one could compare if there were any over-charges. A contact with any named insurance company would reveal if person was paying standard or over-charged rate.

General discussion followed.

Sr. Nora recommended this be looked into. It was suggested that the deaf know (through the ESNews) we don't have enough information to determine whether or not the deaf drivers were discriminated against.

The Counsel was asked to check if a certain person holding Zurich insurance was being over-charged and to report any findings to the Commission.

Mr. Grieco cited a reference in a magazine which told of experiences of deaf automobile drivers. There was a survey in New Zealand of deaf drivers and a comparison was made with the United States which again showed the deaf motorist to be superior to his hearing counterpart.

It was suggested that the Department of Motor Vehicles has a research staff which could look into this.

Mr. Cerosky explained that if a person was placed in the Assigned Risk Pool, he would not be denied insurance coverage at a standard or book rate. The only exceptions made would be where the insured had a record of accidents or moving traffic violations. Mr. Cerosky reiterated that no one is denied the right of insurance coverage if they had a valid license to drive and paid their premiums. Such a motorist also was by law given the right to buy collision, liability, or physical damage insurance.

Aged Deaf Statistics

Commissioner McGrath suggested that a staff member contact agencies in

Connecticut and California. Mrs. Kelly was unavoidably detained so Mr. Marinelli explained a response was received from an Episcopalian Home in Connecticut where they have efficiency apartments renting for $125.00 a month at St. Paul's Mission Home, West Hartford. There are 10 units and only 2 are filled. She was still awaiting responses from other places.

Mr. Strail covered several matters - expressing the feelings of deaf people.

All were requested to submit expense vouchers without delay so that they can be processed.

Mr. Benowitz would like reports from the staff to be in by the first week of February. It was decided the next staff meeting would be in Albany, in the conference room at 855 Central Avenue all day on February 4th.

The next commission meeting is scheduled for Wednesday, March 11th, at 10:00 A. M., in the Education Department Building at 55 Elk Street - Room 211.

Meeting adjourned at 4:30 P. M.

Respectfully submitted,
Eleanor F. Conboy

APPENDIX D

Infant Auditory Screening Manual

AUDITORY SCREENING FOR INFANTS

A MANUAL FOR TESTING

Introduction and Rationale

The first year of life has been called the period of "readiness to listen" during which the normal child learns to recognize and interpret sounds. The period between the age of 12-18 months has been named the period of "readiness to speak." Development of speech is dependent upon adequate listening opportunities.

Various studies show that 0.2-5% of all school children suffer from a hearing handicap and 2½% require professional attention. The earlier the age at which a hearing loss can be detected, the earlier rehabilitation can begin.

Rehabilitation of the deaf or hard of hearing child includes at least the following personnel:

1. The physician who is responsible for total medical care of the child.

2. The otologist who applies his medical knowledge and skill to correct those hearing losses which are remediable by medicine or surgery.

3. The audiologist who evaluates the child's hearing and advises on the selection of a hearing aid.

4. The special education teacher for the deaf who understands the special educational needs of deaf children. These teachers have had training with emphasis on helping the deaf child develop speech and language.

5. The speech therapist who works with the hearing handicapped child on particular speech and oral language problems.

The Development of Hearing in the Normal Child

At Birth

The infant will respond to loud sounds by stretching, eyeblinking or other eye movements, crying, or cessation of an ongoing activity.

3 - 6 months of age

Between 3 - 6 months the infant will begin to localize sounds in his environment. At this age the infant will respond better to soft cooing sounds such as those made to him by his mother.

7 - 12 months of age

Now the baby begins to look up and turn to voice and other meaningful sounds such as rattles. It is important to note that at this age the normally hearing baby will tend not to respond to loud noises. Eight to nine months is the ideal age to perform an auditory screening test.

12 - 24 months of age

At this time the baby responds best to sounds which are of interest to him. Just as adults tend to ignore non-meaningful sounds in the environment so the normal baby by this age has learned to do the same. At this age indications of a hearing loss include a better response to loud sounds than to soft meaningful sounds. If the child appears to hear the sound but cannot locate the source, this is symptomatic of a unilateral hearing loss.

2 - 3 years of age

The child, at this age, reacts best to human sounds. He will still respond to soundmakers and toys, although these are of less interest to him, but will not yet respond well to pure tones. He can carry out simple commands which are spoken softly.

3 - 5 years of age

The pre-school child can be expected to respond well to pure tone audiometric screening procedures. The child can indicate that he has heard by raising his hand or by any other motor activity such as dropping a small block into a bucket, or placing a peg into a pegboard.

The Development of Vocalization, Speech, and Language

Vocalization: Vocalization consists of cries, explosive sounds, babbling, and gestures. Vocalization and babbling in particular, leads to speech.

Speech: Speech is a form of language in which articulate sounds or words are used to convey meaning.

Language: Language is the ability to communicate. It includes every means of communication in which thoughts and feelings are symbolized so as to convey meaning. It may be written or spoken. It may consist of expressions, sign, facial, gestures, or pantomime.

At Birth

Most of the vocalization of the new born in fact consists of crying. The pattern of crying varies during the first month of life and decreases in succeeding months. The baby also makes some simple vowel sounds. At 2 - 3 months he begins to "coo", a response to stimulation.

3 - 6 months of age

By 3 months the baby has learned to use crying to get attention. By 6 months he makes most of the vowel sounds and some consonants unintentionally.

6 - 12 months of age

As early as 3 months the baby may begin to babble and continues until about 12 months. The peak age for babbling is 8 months. Babbling is the production of sounds at will for physical and auditory enjoyment;

it is not speech because it is not connected to specific objects or people. The deaf baby begins to babble at the usual age but loses interest because he cannot hear his own voice. The deaf baby babbles less and stops at an earlier age.

Gestures are also used at this age as a substitute for speech. As the normally hearing child begins to develop speech he will abandon gesture. The deaf baby on the other hand will continue to use gesture and become more proficient at gesturing to communicate his needs unless he receives special education for oral language.

At age 6 months the normal baby will imitate some sounds and by 11 months some simple syllables such as "mama" and "dada" and many consonants.

At about 9 months the normal baby tries to imitate the words his mother uses. At about 12 months the baby begins to say his first words - usually nouns.

15 - 18 months of age

The normal baby begins to enlarge his vocabulary and combines 2 and 3 words to form simple sentences which may be comprehensible only to the family. He uses some verbs at 15 months and at 18 months he begins to use adverbs and adjectives.

1½ years - 3 years of age

Vocabulary expands and pronunciation begins to improve but grammatical errors are common. At this age it is common for children to substitute an incorrect sound for the correct one. At this age children can be expected to have difficulty with the following sounds: z, w, d, s, g and the following blends st, str, sk, dr, and fl. The child will master at least: t, p, b, m, and n. There are great variations in speech development among preschool children.

EARLY RESPONSE TO SOUND AND VOCALIZATION

Time	Sound	Type of Response	Vocalization
Under 3 months	Various sound stimuli	Reflex response evidence of some capacity to hear but not of normal acuity.	Crying 2 - 3 months - cooing
3 - 4 months	Mother's voice	Movement of eyes or body	Uses crying to gain attention Coos, makes vowel sound and some consonants.
4 - 5 months	Sounds that are of interest	Attempt to locate the origin of sounds. Many sounds irrespective of loudness may be ignored.	Babbling begins.
6 - 9 months	Quiet sounds of interest 2 feet from either ear	Positive evidence of increased ability to locate	Peak age for babbling imitates some sounds
9 - 15 months	Quiet sounds - unvoiced consonants, 3-4 feet from either ear	Automatic location	Imitates single syllables and consonants. (mama and dada) Begins to use nouns
16 - 30 months	Sounds of interest, unvoiced consonants, simple commands	Active response in carrying out requests	Begins to form 2-3 words sentences. Begins to use adverbs and adjectives
2 1/2 - 5 years	Simple speech spoken quietly	Positive evidence of understanding	Vocabulary expands, pronunciation improves. Child may still have difficulty with many sounds. Great variations from child to child.

(That part of this chart dealing with Early Response to Sound was prepared by the Alaska Department of Health and Welfare, Division of Public Health, Speech and Hearing Program.)

Infant Screening

A. Preliminary Assessment of Child

Prior to testing an infant a preliminary brief assessment of the child's medical and developmental history and his present state of development and health should be made.

1. Brief Pertinent Medical History
    a) History of complications of labor and delivery, prematurity, other neonatal complications.
    b) History of ear infections
    c) History of frequent upper respiratory infections
    d) History of significant illnesses
    e) History of hearing loss in family
2. History of Growth and Development
    a) Motor - e.g. age sat alone
    b) Vocalization - e.g. cooing, babbling, speech sounds
3. Current Assessment of Child's Status
    a) Assess motor skills, physical, mental and social development
    b) Assess child's present physical condition - a child who is ill should not be tested

B. Testing Procedures

1. Physical Surroundings

The test should be conducted in a reasonably quiet room away from the noise of a waiting room or busy thoroughfare. If possible, a light rug and curtains should be used and bare table surfaces may be covered with sheets to dampen ambient noise.

Furniture should be so arranged as to avoid visual clues caused by shadows.

2. Personnel

A team of two nurses work together. One functions as observer - reporter, the other as tester.

3. Equipment Used in Testing

a) Noisemakers:

(1) High frequency squeeze ball

(2) Middle frequency xylophone

(3) Low frequency Indian tom tom

b) Appropriate toys to distract child's attention

c) A chair for the mother and a small table on which the noisemakers for testing are placed

4. Position of Infant

The infant is placed in a comfortable sitting position on his mother's lap, facing the observer-reporter.

5. Testing Technique

The technique is referred to as the distracting technique. The observer-reporter engages and holds the child's visual attention forward by use of a toy. It is suggested that there be no verbal communication between observer and the child or visual communication between the tester and observer.

The tester distracts the child's visual attention by presenting auditory stimulus at ear level, but out of range of the child's peripheral vision, at a distance of 2-3 feet.

The stimuli used produce sounds that generally are meaningful to babies of this age. The tester moves quickly and quietly in choosing the stimulus and presenting it. The choice of stimulus is governed by the tester's knowledge of its acoustic value.

The effectiveness of the test is influenced by the agility of the tester and her basic knowledge of principles basic to the test.

6. Test:

a) Function of Observer-Reporter

(1) attract child with one toy - change if necessary

(2) select toy compatible with age and interest of child

(3) manipulation of toy - skillful movement

(4) advoid visual communication with tester

(5) do not let child become too absorbed in toy

(6) observe for indication of response

b) **Function of Tester**

(1) Timing - present stimuli at moment of quiet and when child's attention is on the toy.

(2) Present stimuli at ear level on each side.

(3) Present stimuli at 2 feet from ear for age 8-14 months.

(4) Sustain sound if necessary but do not increase intensity.

(5) If child does not respond to a certain sound, present the sound on the other side.

(6) If the child responds, change stimuli.

(7) Confirm response if in doubt.

(8) Move quickly and quietly

(9) Show child source of sound.

(10) If child is concerned about what you are doing behind him, divert him by moving around in front of him. After he has seen you, co-worker will claim his attention and test may be continued.

(11) Never touch the chair the child is sitting on.

(12) Remain out of range of peripheral vision when presenting sound.

(13) Sound must be fair -- give the child a chance.

(14) Present stimuli in rhythmic fashion.

(15) Drop to knees behind the chair and lean body to side of child.

(16) When voice is used, make sound inviting to child.

(17) Alternate the side in which stimuli are presented.

(18) Record child's responses.

c) Order of Presentation

Right	Left
(1) voice - child's name	(2) xylophone
(3) tom tom	(4) squeeze ball
(5) xylophone	(6) child's name
(7) squeeze ball	(8) tom tom

d) Rescreening:

If a child fails the initial screening test, rescreening should be done four weeks later.

e) Referral and Follow-up

The details of referral for complete audiologic examination and follow-up, which are the most important aspect of education rehabilitation for the hearing handicapped child will be developed by the screening center in the local community.

Sample Form for recording responses

Infant Auditory Screening Test

Date:____________________

Name:______________________________________ Birth Date:____________________

Address:____

Significant Medical Data:____

Response

SOUND	Right Ear		Left Ear	
	No Response	Turned in Direction of Sound	No Response	Turned in Direction of Sound
ball - whistle				
xylophone				
tom - tom				
voice - child's own name				

First Screening Test:______________ Referred To:____________________________

Repeat Screening Test:______________ Result of Referral:____________________________

Key: Place checkmark (✓) in appropriate space

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APPENDIX E

Questionnaire on Totally Dependent Deaf

Sample of Questionnaire to Hospital Directors
Regarding the Dependent Deaf

Dear Sir:

The Commission is interested in obtaining information regarding the problems encountered by the deaf in general. One of the Commission's areas of concern is the totally dependent deaf in New York State.

The questions asked by many are:

1. What happens to the totally deaf person in New York State once he is found?
2. What happens to that deaf persons once the dependency is removed?
3. What services are available to the dependent deaf individual?
4. How many such persons are there in your facility?
5. What are your problems in the care of these deaf dependents?
6. How is the rehabilitation therapeutic program programmed to prepare the individual to take his place in Society again?

Any additional information that might be of use will be appreciated.

Sincerely yours,

Stanley R. Benowitz
Staff Coordinator

APPENDIX F

Act to Amend the Education Law in Relation to Licensing of all Persons Dealing in or Fitting Hearing Aid Devices.

STATE OF NEW YORK

20

IN ASSEMBLY

(Prefiled)

January 7, 1970

Introduced by Mr. CEROSKY—read once and referred to the Committee on Education

AN ACT

To amend the education law, in relation to licensing of all persons dealing in or fitting hearing aids or hearing aid devices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is hereby amended by inserting therein a new article, to be article one hundred fifty-five, to read as follows:

ARTICLE 155

HEARING AID DEALERS AND FITTERS

Section 7750. Definitions.
7751. License required to sell or fit hearing aids.
7752. Board of examiners.
7753. Powers and duties of board.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

7754. Grounds for refusal to issue license; revocation.

7755. Examination; applicants.

7756. License without examination.

7757. Reciprocity.

7758. Training permit.

7759. Receipt required for hearing aid.

7760. Penalties.

7761. Fees.

7762. Exemptions.

7763. Separability clause.

§ 7750. Definitions. As used in this article:

1. "Board" means New York state board of examiners of hearing aid dealers and fitters.

2. "License" means license issued by the department under this article to persons authorized to fit and dispense hearing aids.

3. "Temporary permit" means a permit issued by the board to persons in training to become a licensed hearing aid dealer and fitter.

4. "Department" means department of education.

5. "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting impaired or defective human hearing or compensating for impaired or defective human hearing, including ear molds, but as used herein shall not include batteries, cords and accessories.

6. "Practice of fitting and dealing in hearing aids" means the measurement of human hearing by means of an audiometer or by any means solely for the purpose of making selections, adaptations *or sale of hearing aids. The term includes the making of impressions for earmolds. A dealer, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.*

7. "Sale or sell" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

§ 7751. License required to sell or fit hearing aids. No person shall engage in the practice of selling or fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting or sale of hearing aids unless he holds a valid license issued under this article. The license required by this article shall be conspicuously posted in his office or place of business as registered with the department at all times. Duplicate licenses shall be issued by the department to valid license holders operating more than one office upon payment of the appropriate fee as hereinafter set forth.

Nothing in this article shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs only properly licensed natural persons in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations and other like organizations shall file annually with the board a list of all licensed hearing aid dealers and fitters directly or indirectly employed by it. Such organizations shall file with the board a statement on a form approved by the board *that they submit themselves to the rules and regulations of the board and this article which the board shall deem applicable to them.*

§ 7752. Board of examiners. 1. There is hereby established the New York state board of examiners of hearing aid dealers and fitters.

2. There shall be nine members of the board, each of whom shall be residents of the state and citizens of the United States. The board shall consist of four hearing aid dealers and fitters, two otolaryngologists and three audiologists. Each hearing aid dealer and fitter on the board shall have not less than five years of experience and shall hold a valid license as a hearing aid dealer and fitter, as provided under this article, except that the hearing aid dealers and fitters of the first board appointed shall have not less than five years of experience and shall fulfill all qualifications for license without examination as provided under section seventy-seven hundred fifty-six of this article. No two of such members shall be employed by, franchised by, or associated exclusively with the same hearing aid dealer or manufacturer.

3. All members of such board shall be appointed by the commissioner of education. The term of office of each member shall be for four years, excepting that of the members of the first board appointed under this article, three shall be appointed for two years; three shall be appointed for three years; and three shall be appointed for four years. Before a member's term expires, the commissioner of education shall appoint a successor to take office on the expiration of his term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The mem-

bers of the board shall annually designate one member to serve as chairman and another to serve as secretary-treasurer. A quorum of the board shall consist of a majority of its members.

No member of the board who has served two or more full terms may be reappointed to the board until at least one year after the expiration of his most recent full term of office.

§ 7753. Powers and duties of board. The powers and duties of the board are as follows:

1. To authorize all disbursements necessary to carry out the provisions of this article.

2. To supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a license.

3. To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.

4. To certify candidates for licenses and to issue temporary permits.

5. To suspend or revoke licenses.

6. To appoint representatives to conduct or supervise the examination of applicants for license.

7. To designate the time and place for examining applicants for license.

8. To make and publish rules and regulations not inconsistent with the laws of this state which are necessary to carry out the provisions of this article.

9. To require the periodic inspection and calibration of audiometric testing equipment and to carry out the periodic inspection *of facilities of persons who practice the fitting or selling of hearing aids.*

10. To prepare all examinations required by the article.

11. To establish minimum requirements of test procedure and test equipment to be used in the fitting of hearing aids, also the retention of records of all fittings.

12. To maintain a record of the places of business of all licensees.

13. To investigate alleged violations of the provisions of this article, to conduct hearings in respect thereto when, in its discretion it appears to be necessary as provided in section seventy-seven hundred fifty-four, and to bring the same to the notice of the attorney-general.

14. The board may enforce any provision of this article by injunction or by other appropriate proceeding. No such proceeding shall be barred by any proceeding commenced under any other section of this article or by the imposition of any fine or term of imprisonment pursuant thereto.

§ 7754. Grounds for refusal to issue license; revocation.

1. The board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons: (a) The applicant or licensee is guilty of gross immorality.

(b) The applicant or licensee is unfit or incompetent by reason of negligence.

(c) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this article.

(d) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.

(e) The applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.

(f) The applicant or licensee has violated any of the provisions of this article.

(g) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(h) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(i) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.

(j) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.

(k) The licensee represented that the service or advice of a person licensed to practice medicine in this state is used or made avail-

able in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(l) The licensee used the term "doctor", "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(m) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aid models as being the correct, current model of such hearing aids.

(n) The licensee imitated or simulated the trademark, trade name, brand, or label of another licensee under this article with the intent to mislead or deceive purchasers or prospective purchasers.

(o) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(p) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this article.

(q) The licensee falsely represented to a purchaser that a hearing aid was "custom-made", "made to order", "prescription-

made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(r) The licensee refused to accept responsibility for the acts of an employee holding a temporary permit under licensee's supervision.

(s) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(t) The licensee shall fit or otherwise adapt a hearing aid for the use of any minor person under the age of sixteen without a written prescription from a duly licensed physician of the state of New York.

2. The board may promulgate rules, when necessary, to define and clarify the provisions of this section.

3. The license or certificate revoked shall on formal notice be delivered immediately to the board.

4. Proceedings for the revocation of licenses and of certificates of endorsement under this section shall be begun by filing with the secretary of the board a verified petition containing the charges. The charges may be preferred by the secretary of the board or a member thereof or any person, corporation or association. The secretary of the board shall determine whether the petition contains charges sufficiently meritorious to present to the board. The charges may be considered and heard by the members of the board or a quorum thereof, or the president of the board may designate three or more members of the board to act as a committee to hear and report to the board thereon. The secretary of the board shall fix a time and place for the hearing and shall cause a copy of the *charges together with a notice of the time and place fixed for the hearing to be served on the accused or his counsel at least ten days prior thereto. Where personal service cannot be effected and such fact is certified on oath by any person duly authorized to make legal service, the secretary of the board shall cause to be published twice in two successive weeks a notice of the hearing in a newspaper published in the county in which the accused was last known to have been employed or to have conducted a business as indicated on the records of the board, and shall mail a copy of the charges and of such notice to the accused at his last known address. When publication of the notice is necessary, the date of the hearing shall not be less than ten days after the last date of the publication of the notice. At such hearing the accused shall have the right to appear either personally or by counsel, to produce witnesses and evidence on his own behalf, to cross-examine witnesses produced against him and to have subpoenas issued by such board or committee. A stenographic record of the entire hearing shall be made. Upon the conclusion of the hearing the committee shall make a written report of its findings and recommendations and shall transmit such report to the board. The board shall thereupon consider the report, findings and recommendations and shall determine the charges upon their merits. If the board determines that the charges are without merit it shall dismiss the proceeding. If the board upon a proceeding for the revocation of a license shall find by a two-thirds vote that the accused is guilty of the charges or any of them, the board shall transmit to the department the record, findings and determina-*

tion wherein and whereby the accused has been found guilty and shall recommend revocation of his license or suspension thereof for a fixed period or reprimand and/or censure. The commissioner after due hearing may accept or reject the determination of the board and may revoke the license of the accused, suspend the licens for a fixed period, reprimand and/or dismiss the charges.

Any member of the board or of the committee may issue subpoenas and administer oaths pursuant to section sixty-one of the public officers law in connection with any hearing or investigation under this article, and it shall be the duty of the board or committee to issue subpoenas at the request of and upon behalf of the defense.

Neither the committee nor the board shall be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

Upon the recommendation of the board the department may reissue a license that has been revoked. Application for the issuance of such license shall not be considered prior to one year after revocation and shall be made in such manner as the department may direct.

§ 7755. Examination; applicants. 1. Every person desiring to engage in fitting and dispensing hearing aids in the state of New York shall be required to pass an examination given by the board.

2. The applicant shall make application, furnishing to the board on forms to be furnished by the board, sworn evidence that he has attained the age of twenty-one, is of good moral character, is free of contagious or infectious disease, and has graduated from an *accredited high school or equivalent, and such other information as the board may deem necessary for the enforcement of this article.*

3. The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to wit:

(a) Basic physics of sound.

(b) The structure and function of hearing aids.

(c) Fitting of hearing aids.

(d) Pure tone audiometry, including air conduction testing and bone conduction testing.

(e) Live voice and/or record voice speech audiometry.

(f) Masking when indicated.

(g) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy.

(h) Selection and adaptation of hearing aids and testing of hearing aids.

(i) Taking of earmold impressions.

4. No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

5. Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized nor shall there be more than one change or group of changes in any one calendar *year. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examintaion. Every applicant successfully passing the examination and meeting all the requirements of this article shall be registered by the board and certified by the department as possessing the qualifications required by this article and shall receive from the department a license to fit and dispense hearing aids in this state. The examinations provided for herein shall be given four times each calendar year. The first examination shall be given within six months after the effective date of the article or within six months after the date of the final appointment to the board.*

No applicant may take an examination more than three consecutive times. In that event the applicant shall not be permitted to reapply for examination for a period of one year following the date of the last examination.

§ 7756. License without examination. Every person engaged in the practice of fitting and dispensing of hearing aids upon the effective date of this article shall be certified by the board to the department and issued a license by the department, if he shall present satisfactory evidence to the board that he has the requisite skill, is a person of good moral character, twenty-one years of age or older, and has been engaged in the practice of dispensing hearing aids in the state for at least two years prior to the effective date of this article, provided such person pays the fee specified for such

license to the board. This method of granting a license shall be terminated one hundred twenty days following the effective date of this article.

§ 7757. Reciprocity. Upon proper application, the board shall certify, to the department which shall, upon payment of the appropriate fee, issue a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories which the board shall determine to have requirements equivalent to or higher than those in effect pursuant to this article for fitting and dispensing hearing aids.

Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the board. Such applications shall be filed with the secretary-treasurer of the board. The application shall be accompanied by a license or a certified copy of a license to fix and dispense hearings aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the president or secretary of the board of examiners in fitting and dispensing hearing aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license is true and correct.

Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed was at that time of *such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that no proceeding was pending at the time of such removal or at the present time pending against the applicant for the cancellation, suspension or revocation of such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of New York which is a felony.*

§ 7758. Training permit. 1. An applicant who fulfills the requirements regarding age, character, education and health as set forth in subdivision two of section seventy-seven hundred fifty-five of this article, may obtain a temporary permit upon application to the board. Previous experience or a waiting period shall not be required to obtain a temporary permit.

2. Upon receiving an application as provided under this section, the board shall issue a temporary permit which shall entitled the applicant to engage in the fitting and sale of hearing aids for a period of one year. The application shall be accompanied by an affidavit of a person holding a valid hearing aid dealers and fitters license and shall state that the person will be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him.

3. If a person who holds a temporary permit under this section has not successfully passed the licensing examination within one year from the date of issuance, the temporary permit may be renewed or reissued once for a period of six months.

§ 7759. Receipt required for hearing aid. Whoever practices fitting or sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt. The receipt shall contain the licensee's signature and show his business address and the number of his certificate, together with specifications as to the make and model of the hearing aid furnished and full terms of sale clearly stated. If a hearing aid which is not new is sold, the receipt and the container thereof must be clearly marked as "used" or "reconditioned" which ever is applicable, with terms of guarantee, if any.

§ 7760. Penalties. Whoever violates any provision of this article shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for a period of not more than ninety days, or both, and each such violation shall be deemed a separate offense.

§ 7761. Fees. 1. The following fees shall be payable:

(a) Ten dollars for issuing or renewing a temporary training permit.

(b) Twenty-five dollars for filing an application for examination or for filing for a certificate of endorsement.

(c) Fifty dollars for issuing a license or certificate of endorsement or renewal thereof.

(d) Five dollars for a duplicate license.

2. All licenses issued by the department are renewable on January thirtieth. A thirty-day grace period shall be allowed after January thirtieth, during which time licenses may be renewed on payment of the renewal fee. After expiration of the grace period the department may renew such licenses upon payment of *the renewal fee plus additional late fee of twenty-five dollars. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, if such renewal application is made within two years from the date of such expiration.*

3. All fees and other monies derived from the operation of this article shall be paid by the department to the state treasury.

§ 7762. Exemptions. This article shall not apply:

1. To a physician licensed to practice in this state.

2. To persons engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if such person or organization employing such person does not sell hearing aids or accessories.

3. To a person engaged in the practice of fitting hearing aids if the practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization, which is primarily supported by voluntary contributions, unless they sell hearing aids.

§ 7763. Separability clause. If any provision of this article shall be declared unconstitutional, or the applicability thereof to any person or circumstances shall be held invalid, the constitutionality of the remainder of the article and the applicability thereof to other persons and circumstances shall not be affected thereby.

§ 2. This act shall take effect January first, nineteen hundred seventy-one.

APPENDIX G

Life Insurance Questionnaire

STATE OF NEW YORK
TEMPORARY STATE COMMISSION
TO STUDY THE PROBLEMS OF THE DEAF

CHAIRMAN
HONORABLE RICHARD A. CEROSKY
90 COLUMBUS AVENUE
VALHALLA, NEW YORK 10595
TEL: 914-949-2573

855 CENTRAL AVENUE
ALBANY, NEW YORK 12206

STAFF COORDINATOR
STANLEY R. BENOWITZ
TEL: 518-457-6090

Dear Sirs:

The New York State Temporary Commission to Study Problems of the Deaf is interested in obtaining information to aid in its research on life Insurance for the deaf person. We would greatly appreciate information on the following topics, in addition to any other material that you feel might be pertinent.

1. Does your company write life insurance for deaf persons?

2. What amounts of life insurance are available to these deaf persons? Do these amounts differ from the amounts available to persons with normal hearing?

3. Are double indemnity or accidental death provisions written in such policies?

4. Do you apply the same premium rates for both deaf and normal hearing persons?

5. Does age have more bearing on coverage for a deaf person than a normal hearing person?

6. Has your company adopted any standards regarding percentage of hearing loss for rating purposes? for coverage purposes?

7. In the last 24 months, has your company written life insurance for deaf persons? If so, how many? at what premiums? at what coverage?

8. Has your company refused to renew policies on deaf persons? If so, for what reasons?

We would appreciate hearing from you by the third week in August so we may compile our data for the research. Your cooperation will be most helpful. Thank you.

Sincerely,

Carol Skolnik
Research Staff

APPENDIX H

Automobile Insurance Questionnaire

STATE OF NEW YORK
TEMPORARY STATE COMMISSION
TO STUDY THE PROBLEMS OF THE DEAF

855 CENTRAL AVENUE
ALBANY, NEW YORK 12206

CHAIRMAN
HONORABLE RICHARD A. CEROSKY
90 COLUMBUS AVENUE
VALHALLA, NEW YORK 10595
TEL: 914-949-2573

STAFF COORDINATOR
STANLEY R. BENOWITZ
TEL: 518-457-6090

Dear Sirs:

The New York State Temporary Commission to Study Problems of the Deaf is interested in obtaining information to aid in its research on insurance for the deaf driver. The Commission made a previous study in September of 1967. If we contacted you then, we would appreciate any further information you might have.

We are interested in obtaining the following information for research purposes. Any additional information that might be of use to us would be greatly appreciated.

1. What criteria or definition of deafness is used when your company underwrites coverage for a deaf person?
2. What are the minimum/maximum limitations of liability insurance allowed a deaf insurer by your company?
3. What are the minimum/maximum limitations of liability insurance allowed a normal hearing person by your company?
4. Has your company adopted any standards regarding percentage of hearing loss for rating purposes? for coverage purposes?
5. Does your company apply normal premium rates for any deaf driver?
6. In the last 24 months, has your company written auto liability insurance for deaf motorists? if so, how many? at what limits of liability? at what premium?
7. Has your company refused to renew policies on deaf persons? if so, for what reasons?

We would appreciate any kind of information by August 18th that your company might be able to supply to aid us in our research. Thank you for your cooperation.

Sincerely,

Carol Skolnik
Research Staff

APPENDIX I

Press Release for Deaf Motorists

PRESS RELEASE FOR DEAF MOTORISTS

A direct appeal to deaf motorists of New York State to make themselves known to the Temporary State Commission to Study the Problems of the Deaf is being made following a recent meeting of the commission at the State Capitol in Albany.

Commission chairman, Assemblyman Richard A. Cerosky, Valhalla, N.Y., says commission studies suggest a wide area of rate differences may exist in the state in the underwriting of auto liability coverage for deaf drivers, but a lack of records on deaf insured among most insurance companies requires the commission to attempt to get such data from the drivers, themselves.

Twenty-eight of forty-eight insurance companies doing business in the state answered queries by the commission on various aspects of deaf driver insurance coverage, Cerosky said.

Twenty-three of the responding companies reported, "no records kept", on insurance coverage written on deaf persons in the past twenty-four months, he stated and pointed out that twentyof the companies noted that they had adopted no standards regarding percentage of hearing loss for rating purposes, and only five used a definition or criteria of deafness when underwriting coverage for deaf persons.

An absence of general standards may in some instances create an unfair situation for deaf persons applying for auto liabiltiy insurance, according to Cerosky, and the commission desires to establish facts helpful to the problem.

Responses by deaf motorists should be sent to Commission to Study the Problems of the Deaf, Department of Health, 855 Central Avenue, Albany, N.Y. 12206, he said.

APPENDIX J

Questionnaire for Deaf Motorist Insurance Information

New York State Commission for the Deaf
Insurance Survey
855 Central Avenue
Albany, New York 12206

Name ______________________________

Address ___________________________

City ______________________________

Name of Insurance Company ____________________________

Auto Insurance Coverage: (Check if you have the coverage or type of insurance.)

___ Liability: ___ $10/20,000 ___ $15/30,000 ___ Other	Amount of Liab. Prem.	$ ________
___ Property Damage Liability: ___ $5,000 ___ $10,000 ___ Other	Amount of P.D. Liab.	________
___ Collision: ___$50 Deductible ___ $100 Deductible ___ Other	Amount of Coll. Prem.	________
___ Fire & Theft (Comprehensive)	Amount of Comp. Prem.	________
___ Medical Coverage	Amount of Med. Prem.	________
	Total Premium is for ___ months	$ ________

Number of years you drove since the last accident if any. _____

Number of insured vehicles covered by above premiums. _____

Do the above premiums cover any male operators under 25 years of age? _____

Is your policy ___ regular or ___ assigned risk policy?

APPENDIX K

Act to Amend the Education Law in Relation to Providing Educational Services for Deaf Children Resident in the State Below the Age of Three Years.

STATE OF NEW YORK

5024

IN ASSEMBLY

February 16, 1970

Introduced by Mr. CEROSKY—Multi-Sponsored by—Messrs. GRIECO, LEVY—read once and referred to the Committee on Ways and Means

AN ACT

To amend the education law, in relation to providing educational services to deaf children resident in the state below the age of three years, and making appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is hereby amended by the insertion therein of section forty-two hundred four-a which shall follow section forty-two hundred four, as follows:

§ *4204-a. All deaf children resident in this state, below the age of three, of suitable age and capacity, who shall have been resident in this state for one year immediately preceding the application, or is an orphan whose nearest friend shall have been resident in this state for one year immediately preceding the application, shall be eligible to receive approved educational services in one of the institutions for instruction for the deaf of the state as enumerated in*

Explanation — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

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sections forty-two hundred one of this law, as well as in such educational programs or other like facilities which shall, in the discretion of the commissioner of education, be certified as eligible to receive such pupils on a day basis only; provided, however, the foregoing requirement as to length of residence in this state may be waived in the discretion of the commissioner of education.

(2) Each deaf pupil so received into any of the approved institutions or facilities aforesaid shall be provided with tuition; and the directors of the institution or facility shall receive an appropriation for each pupil so provided for, in quarterly payments, to be paid by the commissioner of taxation and finance on the warrant of the comptroller, to the treasurer of said institution or facility, on his presenting a bill showing the actual time and number of pupils in attendance, which bill shall be signed by the chief executive officer of the institution, and verified under his oath.

(3) Children placed in any such approved institution or facility, pursuant to this section, shall be maintained therein on a day basis only at the expense of the state for the period of time the school is in session. Further, the commissioner shall approve such expense only if the child attends the facility nearest his legal residence; provided, however, that the foregoing requirement as to the facility the child shall attend may be waived in the discretion of the commissioner. (4) The commissioner shall promulgate such rules and regulations pertaining to the educational programs for deaf children placed in facilities under the provisions of this section as he shall deem to be in the best interests of such children.

The state education department shall maintain a register of such approved institutions or facilities which, after inspection, it deems qualified to meet the needs of such child for instruction of such child in such institution or facility. Such inspection shall also determine the eligibility of such educational facility to receive the funds hereinbefore specified.

§ 2. The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated to the education department out of any monies in the state treasury in a general fund, for the purpose of carrying out the provisions of this act.

§ 3. This act shall take effect the first day of July next succeeding the date on which it shall have become a law.

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APPENDIX L

Proceedings of the Commission's Rochester Public Hearing on the Licensing of Hearing Aid Dealers and Fitters.

TEMPORARY STATE COMMISSION TO STUDY THE
PROBLEMS OF THE DEAF

MONROE COUNTY INFIRMARY
NURSES' BALLROOM
DECEMBER 11, 1969

PRESENT:

Richard A. Cerosky, Chairman
Stanley R. Benowitz, Staff Co-ordinator
Alice B. Beardsley, Vice Chairman
David C. Dempsey, Counsel
Robert L. Marinelli, Assistant Counsel
Father Martin J. Hall
Carlton B. Strail
Bertrand H. Hoak
Robert O. Morris
Marjorie Clere, Interpreter
Elizabeth O'Brien, Interpreter
Dale E. Harro, M. D.
Joan C. Gable

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Reported by: Henry J. Karasch
Official Court Reporter
Hall of Justice Room 112
Rochester, New York

THE CHAIRMAN: We will call the hearing of the Temporary State Commission for the Deaf concerning the introduction of legislation that would license hearing aid dealers and fitters in New York State to order. First, may I say to you that I want to apologize for not being here on time this morning, and I hope that you will bear with us. Unfortunately conditions in Westchester County Airport did not permit us to leave as scheduled; therefore, we are late, and we are going to try and speed up this hearing now and get right down to the business of the hearing. I am going to ask those of you who testify to let us have your comments and, if you will, to keep them to the point and as brief as possible. We are going to try to get to everyone that wishes to testify this afternoon.

I would like to introduce those at the head table. We have members of the Commission, Mr. Strail to my left, Reverend Hall, and Mrs. Beardsley, the vice chairman of the Commission. Also to my right is the counsel to the Commission, David C. Dempsey and associate counsel to the Commission, Robert L. Marinelli. To my left are also Mr. Hoak and Mr. Morris who are part of the Commission's research staff. The interpreters for this hearing are Mrs. Clere and Miss O'Brien. So, without any further comment and so that we can keep some semblance of formality during this hearing, I would ask those of you who are going to testify to give your name and your address and the association or business with which you are associated. I would like you to take the chair in the center of the room so that we can all hear you and so that your comments can be properly recorded. We will start with the first witness this afternoon, Mr. Paul Gilbert. Before we start, we have with us today the Assemblyman-elect from your Rochester area, Mr. William Steinfeldt. Now, Mr. Gilbert.

MR. PAUL M. GILBERT: Honorable Richard Cerosky, members of the Commission, and ladies and gentlemen. My full name is Paul M. Gilbert, and I have an office at 3 East 14th Street in Manhattan, New Yor I am presently president of the New York Hearing Aid Dealers Association. The Board of Directors, represented here by twelve members, representing all members of the New York State Hearing Aid Dealers Association respectfully submit that the licensure of Hearing Aid Dealers in New York State, at the present time, is premature and unnecessary. The hearing aid industry in New York State has one feature which is unique in the United States -- A Code of Ethics, promulgated and enforced by the hearing aid dealers in New York State with the Attorney General's office, Consumer Frauds Division. Attorney General Louis Lefkowitz is on public record as heartily endorsing the program and praising the fine cooperation between dealers and the Attorney General's office. In its five years of existence, meetings between the Executive Control Committee of the New York Dealers and the Attorney General's office have dropped from four per year to three and then two and in 1969, only one meeting was necessary, primarily because consumer complaints are practically non-existent. The bare handful of complaints in 1969 have been promptly settled to everyone's satisfaction.

The Temporary Commission to Study the Problems of the Deaf has stated: "The Commission is aware that a voluntary Code of Ethics participated in by New York State hearing aid dealers has been generally successful" and the Honorable Senator James Hastings, former chairman of this committee, recommended in his report that "due to the effectiveness of the Code of Ethics, licensing is unnecessary." I have verbatim the statement of Senator Hastings made on March 31st, 1969. "No legislation was found to be needed in the area of hearing aids, since the hearing aid industry Code of Ethics seem to be effective, and there is no public outcry about the hearing aid industry." We, the dealers, are, therefore, at a complete loss to understand the introduction of a licensing bill at this time just a few short months later. Above all, we cannot negate the experience of twenty years by dedicated hearing aid dealers because, in the final analysis, the fitting of a hearing aid is an art, not a science. The fitting of an aid is the beginning of a relationship between dealer and customer which requires weeks and months of counseling, patience, empathy and sympathy and this relationship endures for years. These people are not clinic guinea pigs with us, they are human beings in need of help, and hearing aid dealers have been giving them help for the past sixty-eight years. Without them, there would be untold thousands unable to function in society. Having a professional degree is very nice, but it's more important to realize that we are dealing with people, not numbers and percentages.

In view of the fact that we dealers in New York State possess and adhere to, under the jurisdiction of the Attorney General's office, this unique and highly effective Code of Ethics for the hearing aid industry, we therefore respectively submit that we feel licensing at the present time is unnecessary. That is the text of my prepared statement, Honorable Cerosky, and I will be very happy to answer any questions from the Commission they see fit to ask.

THE CHAIRMAN: Thank you, Mr. Gilbert. Could you tell the Commission with some reasonable accuracy how many hearing aid dealers and fitters there are in the State of New York?

MR. PAUL GILBERT: It's a difficult figure to answer, Mr. Cerosky, because many are part-time fitters, but we find that approximately 273 are on record as dispensing and fitting hearing aids and that is as accurate as we can be, sir.

THE CHAIRMAN: You mentioned "on record." Is this the record of your association or is this --

MR. PAUL GILBERT: Yes, sir, of our association.

THE CHAIRMAN: Then, those are members of your association?

MR. PAUL GILBERT: Not all of them are voluntary members of the association, sir.

THE CHAIRMAN: Not all?

MR. PAUL GILBERT: No, we have six local chapters throughout New York State ranging in attendance from fifteen up to fifty-one, but these do not represent the total number of hearing aid dealers in New York State. However, each year that number is steadily increasing and we hope to have as close to one hundred percent membership as possible in the very near future, sir.

THE CHAIRMAN: With an educated guess, how many would you say are not members of the Association that deal?

MR. PAUL GILBERT: I would say 220 are members and are signers of the Code of Ethics, sir. That is close to ninety-eight percent, sir. Unless my arithmetic is off, I think it is closer to eighty-five percent.

THE CHAIRMAN: Now, Mr. Gilbert, could you tell the Commission if there is any pre-training required before anyone goes into this business or becomes a dealer?

MR. PAUL GILBERT: Yes, there is. It is a common belief that anybody can pick up and open up a hearing aid business tomorrow morning. This is not so, Mr. Cerosky. All Manufacturers demand an intensive training course on the part of the people whom they franchise to sell hearing aids as members of each of the locals in New York State. Each local conducts workshops and seminars, and members are also required to attend courses of instruction. Just recently, about four years ago, we had Don Mark of Seton Hall conduct an intensive course for hearing aid dealers. Three years ago Dr. Maurice Miller was empowered to act as chairman to set up a course of instruction utilizing the services of leading experts in all phases of hearing aids, including Mr. Sullivan who lectured on the basic physics of sound. The National Hearing Aid Society runs extensive courses after a final seminar and workshop is conducted, and the hearing aid industry conducts seminars throughout the country which are heavily observed. The dealers are required to show proficiency before they will be granted a franchise to fit or to dispense hearing aids.

THE CHAIRMAN: You say "the granting of a franchise" and that is granted by the manufacturer of that particular hearing aid?

MR. PAUL GILBERT: Yes, sir.

THE CHAIRMAN: How many manufacturers of hearing aids do we have that we are dealing with?

MR. PAUL GILBERT: I can speak for my own familiarity with that, Mr. Cerosky. The company I represent, Zenith, has a very extensive course headed by Dr. Arim Goler, head of the institute in Texas. The head of Beltone and Radio Ear has a franchise course, as do Maico and most of the leading companies. I cannot speak for all of them, but I know many and I am familiar with their procedure.

THE CHAIRMAN: In other words, there would be some, generally speaking, manufacturers of these devices that give no courses at all, is that right?

MR. PAUL GILBERT: I could not state.

THE CHAIRMAN: Would that be an accurate statement or a fair statement?

MR. PAUL GILBERT: I could not say that for a certainty, sir. I do believe it would be foolhardy for anyone to attempt to enter this field without some sort of training preparation and I think it would not be a fair statement that no hearing aid manufacturers give some instruction. There, again, I cannot state that for a certainty, sir.

THE CHAIRMAN: Are there any questions from any members of the Commission?

REVEREND HALL: What is the training that gives you the capability of this relationship that you speak of?

MR. PAUL GILBERT: Well, these training courses are very carefully assembled so that every hearing aid dealer will have a thorough knowledge of basic physics, acoustics of sound, anatomy of the ear, and the ability to give an audiometric examination including: air and bone conduction, with or without masking, speech reception threshold determination, and the balanced discrimination test score. After these courses, the individual can ascertain whether or not a hearing aid will be of help to the person seeking such guidance. Then his knowledge of the hearing aid per se enables him to recommend a high or low frequency aid for one ear or both or binaural He can interpret the proper reception for a hearing aid and for the ear mold and it also gives him the proper training to work with the individual as far as a certain amount of audiometric rehabilitation, to accustom him to the new sounds of the world that he is entering, and how to get used to the hearing aid. In my particular instance which is not unique, Reverend Hall, people who purchase a hearing aid come to my office once a week for check-up and adjustment and then once a month for the next three months and every three months thereafter. After the first year they are notified to come in twice a year and after that they are further checked as to their progress. This is a never ending process, Reverend.

REVEREND HALL: I am referring to your statement in which you seem to contrast the art of the hearing aid dealer to the art of other people in the field. You seem to indicate that the hearing aid dealer will not make the client a clinical guinea pig. You imply that having a professional license seems to limit a person with regard to dealing with people in that they then reduce them to numbers and percentages.

MR. PAUL GILBERT: May I clarify that, Reverend? There are many leading audiologists throughout the country who possess the highest degree of qualifications to analyze a person's impairment. This is done under a clinical atmosphere in a soundproof room. The hearing is evaluated, and the individual is sent to a hearing aid dealer and fitted. Then the process of rehabilitation begins, because it takes weeks and months and sometimes longer for the hearing aid dealer, working with the hearing aid wearer, to enable him to wear it with the fullest efficiency, sir.

REVEREND HALL: I know under the medical rehabilitation program that such training for the person to adjust to his hearing aid is actually given by speech therapists as part of the medical rehabilitation program. It will only be funded by the State, if it is given by a qualified speech therapist.

MR. PAUL GILBERT: Sir, because of the lack of time and facilities on the part of many of the audiologists, there are not the proper facilities for rehabilitation of these individuals, and we, the dealers, find that we are doing it. This last factor is the least of the audiologist's duties at the present time, sir.

REVEREND HALL: Well, do you disagree then with the medical rehabilitation requirements?

MR. PAUL GILBERT: Definitely not, sir.

REVEREND HALL: They require a speech therapist who is a member of a recognized hearing speech center to perform these services as the only person qualified to receive state aid for such rehabilitation. Do you disagree with that?

MR. PAUL GILBERT: You mentioned the phrase "speech therapist." I am referring to the audiologist, and we feel that the work they do is of paramount importance. They have a definite place on the health team just as the audiologist and just as the hearing aid dealer does, but there are separate and distinct areas.

REVEREND HALL: Then, you don't disagree with the medical rehabilitation requirements?

MR. PAUL GILBERT: Definitely not, sir.

REVEREND HALL: And you do see a place for the speech therapist in the hearing rehabilitation of a deaf person?

MR. PAUL GILBERT: Definitely, by all means, sir.

THE CHAIRMAN: Are there any other questions from any members of the Commission? Mr. Dempsey.

MR. DAVID DEMPSEY: Mr. Gilbert, can you tell us whether the figure of 273 dealers represents dealerships or individuals?

MR. PAUL GILBERT: I don't think I follow you there, sir.

MR. DAVID DEMPSEY: I believe you told us there were 273 dealers in the State of New York?

MR. PAUL GILBERT: Yes, sir.

MR. DAVID DEMPSEY: Are those dealers individuals or are they businesses where one or more persons may actually fit hearing aids?

MR. PAUL GILBERT: They are businesses where one or more people may fit hearing aids.

MR. DAVID DEMPSEY: Approximately how many hearing aid dealers and fitters would you say there are in the State of New York?

MR. PAUL GILBERT: That's difficult to say, sir, because we do not have the exact figures. Some of these dealerships consist of one individual and some of three and some of five and some may consist of ten, with outside sales forces. We do not have the exact figures. We tried to come up with the figure in our last board of directors' meeting, and we would say there are approximately three thousand people directly dependent upon these 273 offices.

MR. DAVID DEMPSEY: Are there discount houses or discount department stores in the State of New York that also distribute and fit hearing aids?

MR. PAUL GILBERT: To my knowledge, sir, there have been several such endeavors made and several of these have failed and gone out of business. There may be some that are in business at the present time with which I am not familiar.

MR. DAVID DEMPSEY: Then those figures would not be included in the figures you just gave me?

MR. PAUL GILBERT: No, sir.

MR. DAVID DEMPSEY: Can you tell me approximately how many people are seen in the State of New York per year by members of your association?

MR. PAUL GILBERT: You mean, how many hard of hearing people are seen?

MR. DAVID DEMPSEY: Yes.

MR. PAUL GILBERT: I would have no way of knowing that, sir. No way of ascertaining that figure whatsoever.

MR. DAVID DEMPSEY: Can you tell me how many hearing aids are sold per year by members of your association?

MR. PAUL GILBERT: I do not have the exact figures for that either. I regret that, sir.

MR. DAVID DEMPSEY: Can you give me an approximation?

MR. PAUL GILBERT: No. I would hesitate to do that. It might be way off. I do not have the official figures. That is compiled by the manufacturers and recorded periodically.

MR. DAVID DEMPSEY: Has your association made an estimate of the number of people in the State of New York who are hard of hearing or who are in need of some hearing aid for an impairment?

MR. PAUL GILBERT: No. We have made no such determination, and we rely upon the national figures indicating that approximately ten percent of the entire population suffers a hearing defect of one sort or another from a mild to a severe degree and, of that ten percent, half of them require either surgery or the use of a hearing aid.

MR. DAVID DEMPSEY: Of the people seen by members of your association, can you give me any indication of the percentage of individuals who are under the age of twenty-one?

MR. PAUL GILBERT: A very small percentage, sir, because here in New York State individuals under the age of twenty-one must be seen through the Bureau of Handicapped Children program and under the Medicaid program. None of us are permitted to fit anyone under that program under the age of twenty-one. It represents a small percentage, sir; however, that figure is apt to increase now with the rubella epidemic some years ago. Children are now coming into the school system, and they may increase that number.

MR. DAVID DEMPSEY: To your knowledge, do any of the hearing aid manufacturers go out and actually recruit salesmen?

MR. PAUL GILBERT: Not to my knowledge, sir. There are representatives of the companies who are always on the alert for likely candidates to enter the hearing aid industry, but I do not believe there is a definite recruitment program such as is done by, shall we say, General Motors or some of those large companies that will go to college campuses. If that's what you are referring to, there is no such recruitment on that basis.

MR. DAVID DEMPSEY: Thank you.

MR. PAUL GILBERT: Thank you, sir.

THE CHAIRMAN: Any other questions?

(No response).

THE CHAIRMAN: Thank you, Mr. Gilbert, for taking the time to be here and give us the information.

We have next, Mr. Melvin Guttman.

MR. MELVIN GUTTMAN: Mr. Cerosky, I would like to relinquish my time to Mr. Gilbert. He has said everything I have wanted to say.

THE CHAIRMAN: You have nothing else that you want to add or anything you want to submit to the Commission?

MR. MELVIN GUTTMAN: Not at the present time. Thank you.

THE CHAIRMAN: Our next speaker will be Mr. Alfred Dunlavy.

MR. ALFRED DUNLAVY: Thank you Mr. Cerosky.

THE CHAIRMAN: Mr. Dunlavy, kindly give your name and address and your association so that the reporting clerk might have it.

MR. ALFRED DUNLAVY: My name is Alfred R. Dunlavy, Assemblyman Cerosky and members of the Temporary State Commission to Study the Problems of the Deaf and I am president and founder of Dunshaw, Incorporated. My main office has been at the same location, 130 West 42nd Street, New York City, for the past thirty-four years. I am past president of the New York City Hearing Aid Dealers Guild, I am currently vice president of the National Hearing Aid Society and chairman of the National Hearing Aid Society's Licensing Study Committee. And in addition to my other activities, may I also say that I am also the instructor of HAX 100, the hearing aid dispensing course at the New York City Community College. Now, Assemblyman Cerosky and members of the State Temporary Commission to Study Problems of the Deaf, I want to state at this time that I am speaking as an individual hearing aid dealer and not as a representative of any of these associations that I have mentioned. In my business I am an employer of hearing aid consultants, audiologists and service personnel.

First, I would like to take this opportunity to congratulate the Commission for the depth of study and comprehensiveness in the preparation of the proposed licensing legislation. I know your interest is to help the hearing aid handicapped realize their full potential in their daily lives.

For many years I have been a strong proponent of licensing and agree with most of your conclusions as evidenced in the proposed licensing bill. I am a proponent of licensing, because I believe it will raise the educational standards and competency of the hearing aid dealers and fitters.

There is a growing public realization of the significance of hearing health and as a result there will be a need for more and more competent individuals to satisfy these requirements. Regarding the proposed licensing legislation, I agree with most of the areas covered in this bill, but I would like to take exception to two sections and a minor exception to a third.

First, Page four, Section 7752, Part Two beginning on Line Seven, where you are talking now of the composition of the proposed board, pertaining to the composition of the board which states: "the board shall consist of four hearing aid dealers and fitters, two otolaryngologists and three audiologists." In this section the hearing aid dealers and fitters are outnumbered in their own field and subject to the combined discretions of the otologist and audiologists who are competent in diagnosis and testing of hearing respectively, but less knowledgeable in the field of hearing aid fitting. The technology of hearing aid fitting is constantly changing and no individual who is not associated on a full-time, daily basis with hearing aids can understand the extent of the specialized knowledge needed for this work.

Hearing aid dealers are involved not only in the initial fitting and sale of hearing aids, but in the post sales care and service of the instrument which usually extend over many years. As an example, a lady who is now thirty-nine years old recently obtained a new hearing aid from me. What makes this case interesting is that this lady obtained her first hearing aid from me when she was a little girl of eight. I might add that we have provided all replacement aids and all the necessary service during those thirty-one years. We dealers figuratively live with our customers and their problems.

It is understandable that both an otolaryngologist and an audiologist could be members of a Hearing Aid Board of Examiners in order to have their point of view relative to hearing theory represented. However, to allow them to dominate the Board would, I believe, unfairly weight the opinions of the Board so as to incorporate subject matter not necessarily germane to improving and maintaining the standards of education and competency in hearing aid fittings. The professionals could very well insist upon an exam with subject matter more appropriate to audiology and otology than to hearing aid fitting. In my opinion to weight the Board in favor of these professions could result in discouraging young people, whom we desperately need, from entering a rewarding career in helping the hearing handicapped. To encourage young people to enter our field is the reason I a teaching hearing aid dispensing two nights a week at the New York City Community College.

As an example of improperly weighted exam, I am convinced that I could write an exam on hearing aid fitting that could be pass by an experienced hearing aid dealer but would prove quite difficult for the otologist or audiologist. If I may, I would suggest, if we have a licensin bill, that the Board be composed of five hearing aid dealers and fitters, one otolaryngologist and one audiologist.

At present there are 18 states in the U.S.A. where the hearing aid dealer is licensed and in no state is the dealer in the minority on the Board. And I have studied every one of the 18 licensing acts. Further, in my research I have found no other law pertaining to the disciplines in the health care field in New York State where the person being licensed is in the minority on the Board.

My second exception to the proposed bill is on page 13, line 18, Section 7756, pertaining to "license without examination." I feel that this so-called "Grandfather Clause" should be more in keeping with previous licensing bills and state specifically that a person who has been principally engaged as a hearing aid dealer and fitter for two years immediately prior to enactment of the law should be automatically licensed in the State of New York. As an example, the Ophthalmic Dispensing Law passed in 1947 states, in essence, "A person who has been principally engaged in ophthalmic dispensing for a stated period of time at the time of the enactment of the bill shall receive a license without examination. Principally engaged was defined at that time as one who derived more than fifty-one percent of his livelihood as an ophthalmic dispenser. In my opinion a similar type of grandfather clause should be incorporated in this proposed bill rather than to leave the issuance of a license to the discretion of the Board. I might comment at this point that the ophthalmic board is composed of three ophthalmic dispensers, one ophthalmologist and one optometrict.

My third, and only a minor exception, is on page 17, Section 7761, Article 3, line 6, which states that "All fees and other monies derived from the operation of this article shall be paid by the department to the state treasury." Most states have found it advisable to segregate these funds for the operation of the Board. One of the licensed states in which the funds were payable to the state treasury found it difficult to obtain sufficient funds to enable the Board to function.

Now, in conclusion I want to congratulate the Committee on the purpose and significance of its work in endeavoring to better the position of the hearing handicapped. I also want to take the opportunity to thank the Commission for permitting me to present my views. If there are any questions pertaining to my presentation, I will be happy to endeavor to answer them.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Dunlavy. Are there any questions from members of the Board? Mr. Dempsey.

MR. DAVID DEMPSEY: Mr. Dunlavy, you mentioned or made reference to a growing awareness of the hearing health on the part of the population. Can you elaborate on that a little bit for us?

MR. ALFRED DUNLAVY: Yes. In the Federal Committee there has been a growing awareness of the amount of hearing loss that is being created by industrial noise and even to our younger generation with our discotheques where, incidentally, it has been measured that the noise in several of the discotheques is higher than it is in a boiler factory. But at any rate there is an awareness and people are beginning to realize that something can be done for the hearing. Basically I feel that the stigma of being hard of hearing is being eased. There is no saying that there probably are thirteen to fourteen million people in the United States that are hard of hearing and most of them are ashamed of it. It seems like a harsh statement, but it's quite true and unfortunately through

through our national association we are endeavoring to get movies to stop making the hard of hearing person being the butt of a joke. We are endeavoring to get the hard of hearing person placed in a better light and I believe gradually we are accomplishing this. I think the fact that children are wearing hearing aids today is unquestionably a help in the re-education. As you probably are aware there was a time in England where a deaf person couldn't inherit property.

MR. DAVID DEMPSEY: One further remark. You made reference to the difference between the occupations of a hearing aid dealer and fitter and audiologist. I wonder if perhaps you might elaborate some on that point?

MR. ALFRED DUNLAVY: Well, in my opinion, the audiologist is a very valuable member of the hearing health care team. His work is generally more diagnosing and testing for pre-and postoperative work. As far as the evaluation of hearing aids, there is even a strong cleavage in the audiological circles as to whether the fitting of a hearing aid is the function of an audiologist. I think that the audiologist is a very important member of the health team. I think that we should certainly all try to work together for the betterment of our hearing.

MR. DAVID DEMPSEY: Thank you.

THE CHAIRMAN: Any other questions? Mr. Marinelli.

MR. ROBERT MARINELLI: I believe you stated that there were eighteen licensing states now and through your experience with the National Association, has there been any consensus or general feeling with regard to licensing in those states, now? Is there any reaction among the dealers to licensing?

MR. ALFRED DUNLAVY: May I ask in which way do you have reference to it?

MR. ROBERT MARINELLI: Any way. What general reaction have the dealers, the eighteen states that are now licensed?

MR. ALFRED DUNLAVY: I will say that in practically all of the eighteen states the dealers were the ones instrumental in getting the licensing bill.

MR. DAVID DEMPSEY: Can you tell us whether or not there has been an upgrading of standards?

MR. ALFRED DUNLAVY: Well, sir, I think that by and large it is still rather young or still a little early to say that we have made tremendous strides. I think every dealer in the United States is endeavoring to upgrade the organization and certainly if he is a member of the National Association, that in itself shows that he is interested in this. I know the various states that have licensing bills and they have been doing the same as we in New York have been doing. They have been holding seminar courses and giving various courses to upgrade their members. We are as interested in upgrading ours. I should state that we are more interested in upgrading ours than even you, sir, are interested in upgrading us.

THE CHAIRMAN: Any other questions? If not, I will thank you, Mr. Dunlavy, for taking your time to come here. Next, I believe we have Mr. Donald Galloway.

MR. DONALD GALLOWAY: Yes.

THE CHAIRMAN: State your name and address and affiliation.

MR. DONALD GALLOWAY: Honorable Cerosky and members of the Commission. My name is Donald Galloway and my address is in Rochester, New York. I am the owner of a hearing aid business that bears my name since 1947, and I have been in the hearing aid business twenty-nine years. I employ a staff office with a staff of six people, and I have two outside branches and a staff of six outside sales consultants for hearing aids. I wanted to open my remarks with an elaboration on the benefits of the New York State Code of Ethics. Mr. Gilbert touched on this rather briefly and I thought that this phase needed some clarification and some expansion. The Code of Ethics is a voluntary thing for the hearing aid dealers, and it has been in operation for five years. It is under the very rigid control of the Attorney General's office, as you know, and it is controlled by an executive-controlled committee that meets anywhere from two to four times a year, depending on the urgency. We have had excellent cooperation from the Attorney General's office because the Attorney General himself and his Assistant Attorney General Barnett Levy have been particularly satisfied with the vast improvements in the hearing aid business in the last five or six years. Barnett Levy, wrote a letter dated December 9th addressed to me which said "this will adknowledge receipt of your letter of December 5th, 1969 regarding your request for our findings as to the effectiveness of a Code of Ethics of the hearing aid industry which was promulgated in 1965. Our experience has shown that we have had excellent results in the disposition of and reduction of consumer complaints by hearing aid dealers against the industry. We have found that the signers of the Code of Ethics have concurred to the ethical practices initiated. Thereby complaints such as the use of white coats, weight and switch testing and other problems have been reduced dramatically." Signed Barnett Levy, Assistant Attorney

General in charge of Consumer Fraud and Protection Bureau.

State Senator Thomas Laverne and at that time State Assemblyman Charles Stockmeister, both of these gentlemen are astute legislators, were in on the Code at the very beginning and have consistently expressed their satisfaction with the Code, its progress, and its results. They have gone on record at various meetings indicating that, as long as the Code of Ethics is in effect and working so effectively, they see no reason to license the hearing aid dealers in the State of New York.

I bring to your attention that the Code of Ethics has had a wide influence. The effect of the Code of Ethics has been noticed far beyond the boundaries of the State of New York. As evidence of this, I have a letter from the Belltone Electronics Corporation, a company that I represent and have represented for twenty-one years. They are by no means alone in this view which they have expressed, and I will take a moment to read this letter which is addressed to me as of January, 1969. It says, "Belltone has always strongly supported the concept of the New York State Code of Ethics as being in the best interest of the dealers and the hard of hearing public in New York. We believe that a voluntary Code of Ethics of this nature, operated and enforced by the dealers with the assistance of state authority is in the truest tradition of American free enterprise and self-government. It is the best means of properly regulating industry practices and protecting the hard of hearing consumer."

I offer that as evidence that the Belltone Company is being influenced as are the other manufacturer-signers of the Code to properly conduct the business of dispensing hearing aids in the State of New York. To my knowledge this is a very beneficial advantage to the Code, and it is of great benefit to the hard of hearing public.

One of the things that has come to my attention over the years as a reason for the licensing the hearing aid dealers has been three complaints that have been repeated time and time again. Most of the complaints against hearing aid dealers are from New York City, As far as I know, from meetings of the Executive Control Committee, there are virtually no complaints that have not been satisfactorily handled from the City of New York under the Code of Ethics. If there are, they have not been brought to the attention of the Attorney General's office nor the Control Committee of the Code of Ethics. It also has been said that licensing of hearing aid dealers would prevent the mail order of hearing aids in this State. We have been advised by the Attorney General's office, in particular, that licensing would not necessarily stop the sale of hearing aids in the State of New York by direct mail. The third common complaint is that anybody can go into the hearing aid business overnight. There is nothing further from the truth than that statement. This may have been true some years ago but not now. Most of the men who are going into dealerships are men who came into the hearing aid business as consultants and have an average of four or five years of experience in training before they are even offered the opportunity of having a distributorship. If anything is true in the hearing aid business, it is true that we are not getting the number of young people in this business that we need. In my own experience in the last twenty years in this locale there has not been any more than two or three additions to the hearing aid offices in the last five years.

Now, it is my feeling that a license would make it even more difficult for us to expand our services. This would be unfortunate because the services of the fitter are vitally important to the hard of hearing population.

The statistics for the National Hearing Aid Journal shows that better than seventy-five percent of the 375,000 total hearing aids which are dispensed in the United States, of which a portion are dispensed in the State of New York, approximately ten or fifteen percent are dispensed by the medical profession and the audiological profession through their clinics. This means that about eighty percent of the hearing aids that are being dispensed are being dispensed through offices of hearing aid dealers. In New York City people might be able to walk into a hearing aid office and buy a hearing aid without being referred, but I don't know how true this is outside of the metropolitan New York, the hearing aid office and the hearing aid fitter is an extremely important factor. If we take Rochester as an example the speech and hearing centers are doing such marvelous work that the audiologists are scheduled far in advance. The person who needs hearing help could not secure this hearing help immediately if it were not for the hearing aid dealer going out into the sparsely populated communities and calling on people at their request. As a matter of fact, they often fit persons with a hearing aid on their written request.

Now, the hearing aid dealers recognize their responsibility in this respect, and it is well known in the hearing aid industry which people need medical attention or further training at speech and hearing centers. We have evidence to prove and to show that a great number of these people who need this type of hearing help, i. e., operations or attention from the speech centers, are being directed there as a result of our initiative. We do not attempt to involve ourselves in the analytical or diagnostic phases, because that is not our purpose or intent. We are able to determine if a person should be considered for medical treatment, and our records show that we send hundreds, to the otologists for operations. Every dealer has a vast file of people who have had operations who would not have known the benefits of surgery if we had not brought it to their attention. My own feeling is that licensing would prohibit the expansion of a hearing aid dealer at the dealer level and deprive him of rendering services to the hard of hearing people who need his services. This is my position and I, incidentally, am the vice president of the New York State Hearing Aid Dealers Association, and I support our position that licensing is not necessary at this time. Thank you very much.

THE CHAIRMAN: Mr. Galloway, again I come back to the question I asked of Mr. Gilbert. Do you have, within reason, some idea of how many dealers there are in the State of New York who are not members of your association? It has been indicated that there are approximately 273 dealers of which about 220 are members of your organization. Is this an accurate figure or can we use it as a reasonable guide?

MR. DONALD GALLOWAY: Well, I think the reason that we do not have the figures is that the definition of a dealer means different things to different people, and we are in an interim period here. A dealer to me is not defined as a person who has two hearing aids in stock, but someone else might consider this a dealer. But there were a few, years ago, who reversed their merchandising program, and they used to go through drug stores. I have seen drug stores and jewelry stores handling hearing aids and some count these as hearing aid dealers. Some of these dealers who are jewelers and who are drug store owners are now going out of business. Basically, I think we truly represent better than fifty percent of the general definition of dealers and perpaps a higher percentage of the true dealers.

I would define a dealer as one who has appliances; spends better than seventy-five percent of his time in the hearing aid business; has a service structure to take care of his users; and is open a number of hours a day in a location to properly service the people to whom he has sold. I think, in the terms of that definition, we represent a large portion of the dealers of the State of New York and more of them through the Code. We are getting stronger in that respect.

THE CHAIRMAN: Of course we define the dealer a lot more explicitly in the provisions of the proposed legislation to the extent that anyone who either sells or fits hearing aids, whether it be one or a thousand and one, under the classification of the dealer would have to be licensed. But we seem to again be in a very hazy area as to how many dealers we are talking about in the State of New York. We really don't know then, do we?

MR. DONALD GALLOWAY: The State of New York has no information?

THE CHAIRMAN: We don't and this is why we are trying to find out.

MR. DONALD GALLOWAY: The New York State Hearing Aid Dealers have no true information and the National Hearing Aid Society has no true record of the dealers. It's one of those unknown situations.

THE CHAIRMAN: Now, can you answer this question? Suppose there was a situation where a customer was sold a device that was not functioning properly. The dealer did not take the necessary steps for action to satisfy this customer, and the customer was still dissatisfied. What happens to that dealer if, under the terms of your Code of Ethics, he breached the Code of Ethics in this particular situation? If it is not rectified, and if it is not evident to the association that he satisfied this breach of the Code of Ethics, what happens to that dealer? Can you tell us?

MR. DONALD GALLOWAY: Well, I can talk from actual experience, because I serve on the Executive Control Committee and have ever since it was founded by the Attorney General's office.

I might explain to you that there is a structure in the organization set up for complaints from the consumer. First of all, if the complaint is a local one, regardless of where the locale might be, the local of that area will take care of the complaint first. Rochester has one, and it is so effective here, locally, that the Better Business Bureau turns over the complaint automatically, without any investigation or without any challenge or question; I am happy to be the liaison for this. They turn over the complaint to us, and we then call the accused dealer into us at a local level, and we talk to him as his own peers and discuss the problem with him. If there should be a situation where it is not handled locally, we are a grievance committee and sit down with the dealer since we are vitally concerned with the Code and interested in it, and it is voluntary. We have yet in this area, and, I know in almost every other area, to unsatisfactorily terminate a complaint, because we take the position that we don't want any reflection on the job we are doing. And, generally, any complaint is pretty much settled by giving the person his money back. This seems to be the great equalizer. If, however, we cannot handle it at a local level, and everything is exhausted at that level, it then goes into the Attorney General's office directly to Barnett Levy. Then we sit down at that level and discuss that complaint again. To my knowledge, there are very few, if any, complaints that have not been settled. Most of them are simply resolved by giving the customer his money back.

THE CHAIRMAN: Can that member of the association be expelled from your association for not satisfying that complaint? Is this a possibility?

MR. DONALD GALLOWAY: We are now through our state structure of six locals, performing the State Association function and working with the Attorney General's office. Locally we have up for amendment a correction to our own grievance procedures. If a man is complained against once it is handled by a grievance committee and, if that same dealer is complained against twice and it is determined that he was guilty, he is brought up in front of the entire membership. There he has to answer to each one of us, and this is not an easy job. If the second complaint is not satisfactorily settled he is expelled, and we even fine him $50.00. We are recommending this procedure be followed by other locals. This is a new procedure, and it is of our own volition and development that this resulted, because we did not have one dealer that, in our opinion, had too many complaints. Surprisingly, and I throw this out for information only, the greatest amount of complaints in the Attorney General's office is one dealer against another, in terms of his advertising. I can think of one immediately where a man was using the word "certified hearing aid audiologist." Although I am one, certified by the National Hearing Aid

Society, to me that has no bearing and should never be used in advertising. However, this advertising was used, and we contacted the man. He stopped using it as a result of our criticism. This is the power of the Code, and this has been the big advantage of the Code.

THE CHAIRMAN: To carry the line of questioning one step further, if this member was expelled from your association because of a number of complaints or because there was no satisfactory resolution of the complaint itself, this still doesn't mean that he cannot continue to operate in business, is that right?

MR. DONALD GALLOWAY: Well, this is our procedure although we have never been called upon to exercise it. If a complaint is not satisfied as a result of local or state action, we would recommend that that person be finished under the provisions of the State of New York and turned over for processing under the Attorney General's office. We would be perhaps the strongest witness against this dealer.

THE CHAIRMAN: Until such action was adjudicated by the court, though, this man could still operate, could he not?

MR. DONALD GALLOWAY: I would say so, yes.

THE CHAIRMAN: Any other questions? Mr. Strail.

MR. CARLTON STRAIL: (Given through the interpreter). Does the National Hearing Aid Company encourage the mail order of well known brand hearing aids through the mail?

MR. DONALD GALLOWAY: No.

MR. CARLTON STRAIL: There is an advertisement for hearind aids that reads "save on national known brands."

MR. DONALD GALLOWAY: Ask him where the location is, Minneapolis or Texas?

MR. CARLTON STRAIL: Prestige in Houston, Texas.

MR. DONALD GALLOWAY: This is a discount house or wholsaler in Texas who does not sell. He does not sell national brands new. Of course if he is buying them up and selling them this would be something that we don't know about. I don't know. Our own contact is with people in the State of New York buying hearing aids. Take this hearing aid (Prestige) for instance. We don't know of anybody who is buying that kind. As far as we are concerned, this man is just wasting a lot of money and advertising and perhaps getting answers from Florida or from other states.

MR. CARLTON STRAIL: Also, Sears and Montgomery Ward are doing the same thing.

MR. DONALD GALLOWAY: The Sears & Roebuck sales in Rochester are done by catalog. Customers go into a store and pick it out, and Sears guarantees it. The people go in and buy it willingly as a catalog item, and they know there is no service on it. There is no misrepresentation on this. If this is the way that person elects to buy the hearing aid, he is doing it against our advice; but actually, to our knowledge, there is a pitiful amount of hearing aids being sold through Montgomery Ward and Sears, and they are not doing a very good job, if they are doing the job at all.

THE CHAIRMAN: Mr. Dempsey.

MR. DAVID DEMPSEY: On the mail order question. In your experience have you seen these mail order hearing aids?

MR. DONALD GALLOWAY: Yes.

MR. DAVID DEMPSEY: What quality are they?

MR. DONALD GALLOWAY: We have two branch stores, and it has been our experience that these people have come to us first and generally found out what kind of a hearing aid they want and what they need. There is no expense for them to come in, and we are glad to sit down and test their hearing and determine if they can use a hearing aid. Then they go buy one and come back to us. Generally we find these hearing aids are obsolete or older models. As a matter of fact, I understand from people at Sears that they don't buy them as current models. The thought that goes through my mind is that they buy a hearing aid which is four or five years old and put a price tag on it. I suppose it is comparable to a hearing aid of that age; anyway it is not a new one. They may have hearing aids with a microphone in the back whereas the current ones have them facing the front.

MR. DAVID DEMPSEY: What is your experience or thought on the mail order selling of ear mold kits?

MR. DONALD GALLOWAY: Well, in all my years of experience, we fit and service roughly six thousand people wearing hearing aids. Yet, the amazing thing is that I have only run up against one person, and that was within the last two weeks, who ordered a hearing aid in this way. She lives in Gains, Pennsylvania, and she is not a State of New York resident. However, she wrote to Montgomery Ward and sent them the money for a kit. They sent the kit, and she made her own ear mold and sent her ear mold in. I have to end that story by saying it fits pretty good. I don't know why she is unhappy, but we are fitting her with a new instrument and she will have her own custom made ear mold.

MR. DAVID DEMPSEY: Mr. Cerosky was asking you what would happen to a complaint regarding a dealer who you might dismiss from your association and what would happen to a complaint against the dealer who was a non-association member or a non-signatory of the Code of Ethics?

MR. DONALD GALLOWAY: We would do the same if there was a complaint in either case. The effect of the Code is that every dealer in the City of Rochester is a member of the Code of Ethics. If there were a new member who had performed some act of selling a hearing aid that was detrimental to the consumer, we wouldn't care whether he was a member of ours or not. We would turn him into the Attorney General's office or investigate it ourselves. We would see to it that the complaint was given due attention.

MR. DAVID DEMPSEY: Would the Better Business Bureau refer this complaint to you automatically?

MR. DONALD GALLOWAY: Yes.

MR. DAVID DEMPSEY: Even though this person were not a member of this association?

MR. DONALD GALLOWAY: I would have to say that we all are members, and we have never had a case where someone wasn't. Again, I can go back to your statement that actually, in truth, people are not going into the hearing aid business overnight. I just don't see it happening. I wish we could get more people into the business, and this is our problem, frankly.

MR. DAVID DEMPSEY: You were talking earlier about the fact that you bring in a consultant. Can you define exactly what responsibilities or duties a consultant would perform?

MR. DONALD GALLOWAY: Yes, I can tell you exactly. First, of all, a man applies to us for a job. We run an ad in the paper as such as Eastman Kodak or Bausch and Lomb do. When that man comes in, we put him through an exhaustive check as to his education, credit, employment background, and all the employers for whom he worked. What we are looking for is a man who is honest and sincere, a man that has a little understanding of the basic problems of the hard of hearing, and a man who has a background on the level of education so that he can absorb our extensive training. Once this man has met these qualifications, we would discuss it with him for two or three months. Then that man is brought into our office. He does not work on a commission but becomes familiar with the problems of the business. We underwrite his expenses so that he is not obligated to make a living off any sale. I speak for Belltone, and they have an extensive and one of the most enviable training programs. It is recognized in the United States as one of the finest and covers a program based upon the same procedures and subjects that we would have in our certification program at the National Hearing Aid Society level. After that man is qualified and trained, particularly on the characteristics of hearing aids, the maximum power outfit, the gain and pitch compensations of hearing aids, he is then sent out and calls on nothing but dealers and users. Within sixty to ninety days this man then is calling on people who are in need of a new hearing aid or in need of a hearing aid.

One of the most important partsof our training aspect is in the use of the audiometric test. If a person is found to have a difference between the ear and bone threshold, he is advised to stop immediately. We encourage that person, if they have no medical contact at all, or if they have an audiologist, to go to a doctor to explore the advantages and the possibilities of a stapedectomy. We call one of the local doctors or a doctor in Buffalo or Syracuse and set up an appointment for him. As I say, we have an extensive file on doctors. There is one doctor in Buffalo where we have sent over 250 people. Many of these people we send are people who have bought hearing aids from me for the last twenty years and who, I think are better off with an operation and a chance for normal hearing than relying on a hearing aid. This man is trained on that same philosophy, and all audiograms are brought in. He must go through a complete procedure before the hearing aid is delivered to the individual. If there is any chance that the aid is not going to be successful for the user, it wouldn't go out the door.

This is why most of the dealers have been in business for eight, ten, fifteen, twenty years or more. One of my consultants has been with me thirteen years. The newest man has been with me for six years. They are experienced people, and they have a tremendous usefulness, especially in the rural areas like Allegany County which has a very small population. There is no audiologist there and there isn't one hearing speech center in the county. People who are eighty-five years old can't drive very far for services. That's why we have an office there. My men will service these people in their home, or they will have a service man that comes to that town to provide service for these people. Every hearing aid dealer does this. Anyone who does come in to the hearing aid business is running up against this type of structure and, if he is going to be in their overnight, he will have an awful hard job of staying in business. He soon will be out of business, and he should really know better than to try.

MR. DAVID DEMPSEY: How old are these people that you are recruiting? Is there any age requirement?

MR. DONALD GALLOWAY: Of course, as you know, in the State of New York there is no discrimination as to age, We look for something else besides age. We look for the ability of a man to absorb the training. In his application he has to give three people as references, and these people are contacted by phone. This man must adapt easily to the instructions and policies of the office. If the man is thirty-five, fine. If he is sixty, fine also. Two of my men are over sixty, and if there is a sixty-five year old man that meets the qualifications, we are not particularly concerned about his age. If a man is below twenty-five, he often does not have the rapport and finds it very difficult in this business. So I would say the average age is somewhere around thirty to thirty-four years of age for most of them with degrees and a good education.

REVEREND HALL: As I understand the testimony, you are saying from the point of consumer fraud, that there is no point in having any license because this is being taken care of by your own Code of Ethics. Is that in the answers you have given? The other point would be that there is no need for a license from the point of view of requiring training or the examination of persons for competency because you give that training; therefore, the license would not be necessary. Would that be a good or fair summation?

MR. DONALD GALLOWAY: Without the benefit of any further additions to that, I would probably say that is pretty close.

REVEREND HALL: I know there are many licenses required of people who are already trained. Many times they have very stringent educational requirements to pass before they are even eligible in New York to obtain a license. Now, what would be the exception in this area so that the training that you give, which is not given in an established educational institution, should enjoy exemption from license than the licenses which are required of other professional people even after they obtain such training from established and qualified educational institutions?

MR. DONALD GALLOWAY: I was instrumental in the State University at Geneseo offering a course in audiology for hearing aid dealers in 1959. It was attended by people from Rochester School for the Deaf, all the hearing aid dealers, doctors from Strong Memorial Hospital, and the state teachers from the School for the Deaf. It was quite a good class. Even if one of our consultants did wish to learn more concerning the actual fitting of a hearing aid, there is no course that is available in the schools for them. It is not true, in my experience, that you can look at an audiogram see that a person needs a particular kind of a hearing aid. I have records here from various agencies which have tested individuals and recommended a certain hearing aid. They are a million miles off, because in the fitting of a hearing aid there is no program training we know of that will eliminate what we find at our local tests. We cannot equate it with the characteristics of A hearing aid or hearing aids B & C. And every hearing aid manufacturer doesn't make just one hearing aid, they make 150 hearing aids from Zenith to Radio Ear in terms of outfit characteristics. Then once you learn all of the characteristics of the present aids they come up with a new group of hearing aids. Then you have all new characteristics to learn regarding frequency range, the gain at the various frequencies, the average gain or the peak gain, the maximum power output, and the power at which that hearing aid will not amplify or blast your head off. These are the things for which we can't send a man to a speech center, because he couldn't learn all of them. He just wouldn't be able to keep up with all the new things. So this becomes our responsibility, and we fulfill this responsibility. We are knowledgeable as concerns the Belltone hearing aid as Mr. Gilbert is on the Zenith and Mr. Dunlavy is on the Radio Ear and Mr.

Klausner is on the Maico, et cetera. We are knowledgeable and we keep abreast of the changes. As you know, after you make another one thousand hearing aids of X models, the thousandth is not the same as the first one. There are changes in the models, and they are all within tolerances. You may get one top level and the other may be different. If I were to take all my staff tomorrow and send them somewhere to make them more knowledgeable, it would be the same repetition of SRT, audiogram, bone conduction and air conduction material which they have been through time and time again. Bear in mind, we manufacture audiometers, and we sell them to hospitals and speech centers. We make the equipment for all this testing and we are knowledgeable about what tests they are. We know speech reception threshold, and we know speech testing. This is not what we have to train our men. If we train them on how to make an SRT test and not how to fit the person with the right hearing aid, then we are doing the wrong thing. We have evidence that the speech centers with all their intent and tremendous knowledge and with all their training have missed the boat many times in this area. We work together closely with the speech centers and we work extremely closely with every speech center and audiologist so that we can do the refining at our level. Frankly, we can take a consultant, a knowledgeable and intelligent person, and we can train him in this, providing we start off with the right kind of person. So our selection has to be absolutely perfect, and we make sure that we start off with the right people.

REVEREND HALL: I think the question is: What is there so special about your training or so special about your art of fitting a hearing aid which would exempt you from seeking a license to practice in your field whereas in many other fields persons are required also to seek a license. What is there about your training or your ability to fit a hearing aid that exempts you from this ordinary procedure in the State of New York?

MR. DONALD GALLOWAY: Well, as I said, we have training within our own structures that we cannot get from the outside.

REVEREND HALL: Right. I am not quarreling with the training.

MR. DONALD GALLOWAY: I can answer that in this way, As far as I am concerned we have our procedures and we have a structure that assures the consumer of adequate treatment and adequate fittings. The facts are that we are doing eighty percent of the fittings and have for twenty years attested to this. For this reason there is no need for licensing because the existing Code is doing an adequate job.

THE CHAIRMAN: While I have been listening to you, it appeared that most of your testimony had to do with basically your own operation in Rochester. Is that correct, or are you talking about all of your members in this association? Do they do exactly what you have been telling us that you do in your business?

MR. DONALD GALLOWAY: I would say that some even do better than I do, and I am talking about my knowledge of the hearing aid dealers in the State of New York.

THE CHAIRMAN: I am interested in learning if they do all as well as you do it.

MR. DONALD GALLOWAY: I would say, yes, to answer your question. To my knowledge and in my opinion they do.

THE CHAIRMAN: For those who are not members of your association, of course, you can't account whether or not they take the training or if they have any at all.

MR. DONALD GALLOWAY: I could even attest for them, because they are selling the same brand of hearing aids. You see, I know for instance that Belltone would insist that you took the same training whether you sign the Code or not.

THE CHAIRMAN: Say there are dealers who are not as well known as Belltone, Zenith, Maico or some of the others. Is it possible that they do not take the training, and is it possible that they could sell these other devices without taking that training? Wouldn't that be a fair conclusion?

MR. DONALD GALLOWAY: Well, to my knowledge all the manufacturers have a training program. I don't know of one that doesn't, and some would have better training than us because they have a greater line and greater distribution.

THE CHAIRMAN: The reason I asked is that I would like you to take a look at an article that appeared in one of my local papers in Westchester County which has to do with nerve deafness. I will show that to you, Mr. Galloway. I would like to give you a few minutes to look it over.

MR. DONALD GALLOWAY: I am familiar with Hushtone.

THE CHAIRMAN: Well, are you familiar with that device? Do they require any training to sell that device?

MR. DONALD GALLOWAY: Hushtone is not a hearing aid.

THE CHAIRMAN: In other words, it does not require any dealership or doesn't require anything to sell that device? Will this help persons affected with deafness or who are hard of hearing?

MR. DONALD GALLOWAY: I have had many discussions with

Hushtone at the national conventions, and they are not an electronic hearing aid. They have no vacuum tubes or transitors which, of course, replaces vacuum and thus no batteries. It is a receptacle which has no amplification, and I don't think they claim any. It says "no operating expense" and this would verify there are no batteries.

THE CHAIRMAN: Well, I am not too concerned about what they don't claim as much as I am about what they do claim in their advertising. Very frankly, if I were a person who had a slight hearing problem, at first glance of this article, I would think that perhaps this is a hearing device that is just what I need. Then, again, it is a device that apparently is now being sold in my community by some dealers, and, I don't know who, but they are coming to Westchester County as pointed out in another article that I can show you. There are dealers selling this device in Westchester County, and it doesn't surprise me that a lot of people will buy this device, thinking that they are buying a genuine hearing aid device to help them with their hearing.

MR. DONALD GALLOWAY: This company would be eligible for treatment under fraud and misrepresentation, because this is not a hearing aid. They wouldn't even qualify for the association either national, local or state-wide. They are not hearing aid dealers and they are playing on a bunch of words here. I might tell you this was one of our discussions at the last meeting which again shows you how alert we are as far as the Executive Control Committee is concerned. It has to be brought to the attention of the Attorney General's office, and they are gathering information to proceed against this. This is not a hearing aid and they are not hearing aid dealers. Just what they are, I don't know, but they don't come under the classification of an electronic hearing aid dealer as we know it.

THE CHAIRMAN: Well, I wondered. If I might follow this line of thinking for a moment. If we had a licensing law much the same as has been proposed, wouldn't you conclude that it would be extremely difficult for any kind of a dealer to sell this kind of device without having some background knowledge, some information, or some education concerning the selling of hearing aids? Now, you are a hearing aid dealer and obviously you noticed right away that this is not a hearing aid device. You don't obviously carry this in your business and I don't know how many gentlemen carry it, but I see a lot of heads shaking that they don't.

MR. DONALD GALLOWAY: Not a one.

THE CHAIRMAN: But you think that someone could come up with a shop and say "Here, I am selling a device that will help you with your problem of hearing." He doesn't need a license and he doesn't come up to the level of your Code of Ethics, but he can in essence go out to the public and sell everything he can. Then he can pick up his bag and baggage and move on and there is very little that we can do about it. Isn't that a fair assumption as to what can happen with a dealer like this?

MR. DONALD GALLOWAY: I can't answer yes or no. Even if they were licensed, that same company would try to do what they are doing now. This company wouldn't get very far because I can tell you we have knowledge on this. I think you know Mr. Manny; He is in your area.

THE CHAIRMAN: I am happy to know that Mr. Manny is also testing a device for nerve deafness, almost the same as the one that you have here in this same print.

MR. DONALD GALLOWAY: He can substantiate his. We do not correct nerve deafness and we can substantiate here and now that we do satisfy nerve deafness.

THE CHAIRMAN: I am not impugning the integrity of Mr. Manny, but what I am saying is that if this is a fair and accurate way of advertising to cure and help nerve deafness, then I say this fraud is what we have to stop and if this is fraud,then the way we have to stop it is through a licensing act so that from anyone that tries to deal this way we will snap it away without having to prove fraud in the courts. That's what I suggest. Any other questions?

MR. CARLTON STRAIL: Why do the hearing aid dealers think that people with nerve deafness can be helped?

MR. DONALD GALLOWAY: Simply that we are helping them.

MR. CARLTON STRAIL: Most nerves are dead.

MR. DONALD GALLOWAY: Well, this is a relative discussion and let me read you a work-up from a summary which states that "Otological testing revealed a mild bilateral" -- let me get one that is a little more specific. Here are some specific cases and let me take one here that there is a person who had a work up, complete audiological work-up where the summary is "mild bilateral sensory loss" and the audiological work-up here by the otologist who did this decided there was a sensory loss and they were sent to us and this person is satisfied and satisfactorily wearing a hearing aid today. We have been fitting sensory loss or nerve hearing losses. When doctors send to us people who are not eligible for the stapedectomy operation and they say this person has a severe nerve hearing loss and to fit them and these people are successfully wearing hearing aids, we are not talking about people with dead nerves. We are talking about people who have impaired hearing and where the impairment is of a sensory nerve type which is not conductive. These people are being helped and we have evidence in this regard and there is one here and we have more.

THE CHAIRMAN: Any other questions? (No response.) Thank you, Mr. Galloway, very much for taking your time to come here to testify. We will now have a short recess.

(Whereupon, the hearing was temporarily recessed.)
(Hearing continued.)

THE CHAIRMAN: We now have Dr. Maurice Miller. State your name and address and affiliation, please.

DR. MAURICE H. MILLER: I am Dr. Maurice Miller. I am president of the New York State Speech and Hearing Association and I am Associate Professor of Otology in the Department of Otolaryngology of the New York University School of Medicine and Co-ordinator of Hearing at the Speech Center at Bellevue and University Hospital in New York City, located at 566 First Avenue in Manhattan. I do not have a prepared statement and I did not see the legislation until late last week, but I have some comments that I would like to make. I think a great deal of constructive thinking went into the preparation of this piece of legislation and I think it's far superior to many other licensing bills that I have seen and I think it makes a major step in the direction of protection of the hard of hearing public and I think that my statements relate only to minor modifications in the bill which I would like to bring to your attention, but I do want to indicate that I agree with the objective and philosophy and the thinking that obviously went into its preparation. My first comment has to do with the kind of professional examination which the hard of hearing public should get prior to the sale of the hearing aid. This is on Page 9, Section (t), line 8. I believe first of all that the requirement that the hard of hearing patient who is under sixteen be seen first by a licensedphysician be expanded to include persons of all ages. I do not think that we should deny this form of protection to middle and all aged persons. Indeed, there are many life threatening conditions; such as, tumors of the eighth nerve whose initial symptom is very often a hearing loss which occur to persons in their third, fourth and fifth decades. I think that careful and professional evaluation of these patients by properly trained individuals is essential. These conditions are relatively infrequent in persons below the age of sixteen and they do occur but they are largely a phenomenon of the middle aged and young adult life. And before a hearing aid is recommended, I think we have the obligation to make certain that a life threatening condition such as an acoustic tumor or some other space occupying lesion on the eighth nerve is not present. Secondly, I feel that the geriatric population, which is taking up the greatest amount of time of the responsible audiologist and hearing aid dealer also requires a professional work-up. His needs include all forms of auditory rehabilitation, speech, reading auditory training and speech therapy and which is the responsibility of the professionally trained audiologist and I would like to see his needs and interests protected and I do not think you would do this by limiting this requirement to persons under the age of sixteen.

Furthermore, I would like to suggest that rather than an examination by a duly licensed physician who may be a general practitioner with little interest or expertise in the area of auditory problems, that instead of this being a duly licensed physician, it be an otolaryngologist

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who, as you know, is the physician who specializes in the medical and surgical treatment of diseases of the ears, nose and throat. And I would suggest furthermore that this otolaryngologist be board certified or board eligible as a requirement. As far as the audiologist is concerned, I think all patients prior to being fitted with a hearing aid should be seen by an audiologist for whichever audiological procedures he feels are indicated. This doesn't mean that we do a detailed three or four hour examination or multiple examinations of every patient, but certain procedures should be done as indicated by the specific need of the patient and I would suggest that this audiologist be certified by the American Speech and Hearing Association, which has a very active and careful endorsement program of certification. The audiologist is trained in the phenomena of normal hearing and concerned for abnormalities of audition. Approximately one hundred colleges and universities in this country have established full academic programs in audiology. Students majoring in this professional discipline complete from five to eight years of academic training and culminating in the award of a degree of Master of Arts or Sciences or a Doctor of Philosophy or Science or Education. My own degree, incidentally, is Ph. D., not M. D., although I have spent twenty years of my professional life operating hearing and speech centers in departments of otology and our referrals go to hearing aid dealers of the caliber represented here this afternoon. And I am suggesting that the influence of professional care involved in examination by an otolaryngologist and audiological evaluation apply and then referral is to a dealer. This, to me, constitutes the minimum of good care for the patient. It's the kind of care that my mother or your mother would hopefully get and I think that the general public needs to know that each of these members of the health team has a contribution to make in a specific order. It is fine for the dealer to make the referral to the otologist, but I would rather that he not be faced with the burden and the onus of deciding which of the patients should be sent for otological referrals. And many of the patients with the most severe problems do not have conductive losses. They have sensory neural losses which are indicative of a seriously potential life threatening situation and there are highly sophisticated audiologists tests which the trained audiologist can administer and interpret to detect the presence of these conditions. I think the public should have the benefit of this kind of help before the hearing aid is sold and serviced by the reputable dealer.

The American Speech and Hearing Association is the national professional association for speech pathologists and audiologists and it has established and administers the standards for certification which require that the minimum of a master's degree include 60 semester hours of a well integrated program of fundamental and specialized courses in this discipline in addition to supervised clinical practice and professional experience under the supervision of a person who holds the certificate of clinical competency.

My next recommendation for the attention of the committee has to do with the role of the hearing aid dealer in performing the audiologic testing which is not connected with the sale of hearing aids but for the purpose of its use by a professional. This is on Page 3 and starts with line number 2. "A dealer, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing." I think this encourages the performance of professional responsibilities by the hearing aid dealer which are not connected with the sale or the services of the hearing aid and I would suggest that this section be very, very carefully reconsidered in terms of the responsibilites which can best be assumed by each of the three major members of the health team concerned for the hard-of-hearing. In general, there is reference to the audiologitst through the bill, but there is no definition of what an audiologist is and the definition I have suggested is a person who holds the certificate of clinical competency from the American Speech and Hearing Association and has met the requirements which I have just summarized, otherwise there is danger of confusion with the audiologists who are not certified and who are not working towards certification or with a concept of the certified hearing aid audiologist which, I believe was mentioned earlier by Mr. Galloway. So, for example, in reference on Page 4, line 9 to the audiologist who would be on the board I would suggest for your consideration that these audiologists be holding the certificate of clinical competency; that this be a person who is holding the certificate of clinical competency in audiology from the American Speech and Hearing Association. This is our guarantee that the individual has met minimum qualifications and, I think, we have the obligation to make certain that audiologists who are serving the hard-of-hearing public have met this requirement. I would also suggest that the otolaryngologists who are referred to on the same line be board certified or board eligible in their specialty. On Page 7, Section (k), line 26, "The licensee represented that the service or advice of a person licensed to practice medicine in this state is used or made available in the fitting, adjustment, maintenance or repair of a hearing aid when such representation was not true." I would suggest the addition "or one certified as an audiologist by the American Speech and Hearing Association in this state is used or made available." My precedent for this is the suggested model bill for the licensing of hearing aid dealers which has been developed by the committee on special elements, the American Speech and Hearing Association and has been presented to the legislative counsel of the association for its consideration. Page 8, line 3 "The licensee used the term 'doctor', 'clinic'." And I would like to add among the terms which should be included, "audiologist, otologist, state licensed clinic, state registered or state approved," which case I think that those who drafted this legislation were very careful that terms with a medical connotation be excluded, but they were not equally careful that terms suggesting a professional audiological connotation also be excluded and I would suggest those additions. To go on with Page 8, line 3 "or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon." I would suggest for your consideration the words or A-S-H-A certified audiologist. I hate to use the word abbreviation, but the A-S-H-A stands for the American Speech and Hearing Association. This is to the audiologist what the A. M. A. is to the physician.

My most important recommendation, I feel, deals with Page 9, line 8 on what the hard-of-hearing person should get before he is referred to the dealer. And, I believe, that every hard-of-hearing person within six months of the sale of the hearing aid should be seen by a qualified otolaryngologist and a qualified audiologist. I have mentioned one group of conditions which are of great seriousness and whose only symptom for an extended period of time may be a hearing deficit and that is the space occupying lesions of the eighth nerve. There are also lesions of the brain stem and lesions of the temporal cortex which may also be manifested by some form of auditory complaint and it is possible for a patient with one of these problems to be among the eighty percent of people who go directly to the hearing aid dealer. I think most hearing aid dealers would support this recommendation as an important contribution to good health care for the hard-of-hearing public. Also there is the problem of the chronic or intermittently discharging ear, where the patient may require medical and possible surgical intervention. I think this patient should be carefully evaluated otologically and audiologically before he gets to the dealer. It's fine when the dealer tests the condition and makes the referral. In terms of planning for public protection, we want to build into the law certain safeguards and I think that this is one of them. Of course, the patient who has a surgically correctable hearing loss should have the opportunity before he gets to the dealer's office of having an otological and audiological work-up which determines whether he is a good candidate for the procedure and he should be told about the procedure and told its potential advantages and difficulties and if he wishes the surgery, fine and, if not, he should go to the dealer feeling secure that the problem has been evaluated and for medical, psychological or other conditions he elected to purchase a hearing aid which is fine. But he should have the benefits of that professional work-up, first.

Page 12 lists the areas which would be covered by the examination of the hearing aid dealers and fitters. On the question of live voice, Line 11, Section (e). It should not be live voice. Live voice is what I am using now in a situation where my voice is not being amplified by electronic equipment. What this refers to is microphone voice. I think if you check with knowledgeable people in the area they will agree on this difference. On the same page, line 18, Section 4. "No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body." I am concerned about this section. I don't think a hearing aid dealer can really do an adequate job in carrying out all of his essential functions without knowing something about the diagnosis, the nature of the diagnosis of hearing problems which incidentally he is doing, power, tone, audiometry and speech audiometry is part of a diagnosing of an auditory problem. There seems to me to be a conflict between saying he should not be tested on knowledge of the diagnosis and then describing a test which includes diagnostic procedures. I think the hearing aid dealer should know something about the nature, cause and treatment of hearing loss in order to do the job properly. It doesn't mean that he is going to make a diagnosis of otosclerosis or Meniere's disease nor does it mean he is going to carry out treatment which no reputable hearing aid dealer will do, but he should know something about how his own work relates to the problem of hearing impairment.

My final comment is on Page 17, line 10, Section 2. There is a four-lined description of the otologist there without mentioning the otologist and I couldn't figure out why. In line 9 you refer "to a physician licensed to practice in this state" and on line 10 Section 2, I am quite certain you are referring to the audiologist. "Persons engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if such person or organization employing such person does not sell hearing aids or accessories." I would raise the question why not indicate you are referring here to an audiologist who has met this requirement of the certificate of clinical competency from his national organization, the American Speech and Hearing Association. There was some reference in the earlier

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testimony this afternoon that speech and hearing centers missed the boat in many of their recommendations and we do and I will admit to my share of errors and I will admit and my colleagues will admit to their share of errors and I think we can all point an accusing finger on isolated cases to errors that we make. I would suggest that there is a method of control of these errors through a cooperative relationship between the otologist and the hearing aid dealer so that when the errors occur on either side, the other individual, the other discipline knows about it and so that it can be corrected in order to benefit that patient rather than for the purpose of looking back in retrospect and saying we should have done this or you should have done that. There are ways of resolving those problems without being critical of other groups and so that we will help that particular patient. Each of us is responsible for making what I am sure are well intentioned errors. This should not occur the next time we see a hard-of-hearing individual with a comparable problem. I think it's necessary to look at the three disciplines that are involved in this program and in the management of the hard-of-hearing patient and look at their background and qualifications and the years that they spend in training and their experience and to determine what each group is best qualified to do. I would propose that the kind of care that an individual gets when he first sees an audiologist, interested in problems of hearing and auditory rehabilitation, then he is seen by the professionally trained otologist and is referred to the hearing aid dealer represents the best kind of care for the hard-of-hearing we have available. And in terms of public protection, I would hope that we would write into the law a method of providing for the hard-of-hearing population at large what we know constitutes good care.

Thank you.

THE CHAIRMAN: Thank you, Dr. Miller. Could you tell, Dr. Miller, how many certified otolaryngologists there are in the State of New York and how many certified audiologists there are in the State of New York, to the best of your ability?

DR. MAURICE MILLER: I am going to give you a guess-estimate. It can be checked simply by going to the directory of medical specialists under the section of otolaryngologists and counting the number of people in New York State. I would estimate that it's in the neighborhood of four hundred to five hundred. I would estimate that nationally it's well, I just gave a short course in audiological problems of cerebral palsy to the American Academy of Ophtalmology and Otolaryngology which met in Chicago in October and there were five thousand people present and some of these are residents in training, but I think this reflects the approximate number of people. And as far as audiologists are concerned, I have some data. Remember, we are part of the profession of speech pathology and otology and many of our practitioners are in speech pathology. I have in my files the latest figure from the national office of the American Speech and Hearing Association which was that there were one hundred seventy-five persons who had the certificate of clinical competency in audiology in New York State.

Now, I would suggest furthermore that akin to other kinds of medical care and health care that most of these people are concentrated in the major cities with relatively poor coverage in the rural areas. It's a very real problem and not just in the field of hearing, but generally and I think that you will find that there are no otologists and no otolaryngologists and there may not be any hearing aid dealers, either.

THE CHAIRMAN: That was leading me into my next question. To the best of your judgment, do you believe that there are enough otolaryngologists and otologists to service the needs that would be required by the hard-of-hearing?

DR. MAURICE MILLER: Yes, I do, sir.

THE CHAIRMAN: And you do believe there are enough?

DR. MAURICE MILLER: Yes. And I also feel that if we recognize the need for this kind of care and attention, this will serve as the impetus for the expansion of training in both of these disciplines and that it is not necessary for every test to be done on every patient and that knowledgeable otolaryngologists will select those procedures which are important for a particular patient so that we can cut the time involved and see more patients for those services that we can perform.

THE CHAIRMAN: Are there any other questions?

MR. DAVID DEMPSEY: Doctor, do you feel that there are sufficient otolaryngologists and certified otologists to serve the hard-of-hearing public in the State of New York?

DR. MAURICE MILLER: Yes, sir. I thought that was the thrust of the Chairman's question.

MR. DAVID DEMPSEY: Yes, I know, but the fact of the Senate Reports made several years ago in which reference was made to the fact that nationally approximately only ten percent of the hard-of-hearing public could be served adequately by the otologists and otolaryngologists.

DR. MAURICE MILLER: I think this varies from geographical area to geographical area. I think there are parts of New York State where there are more than adequate facilities and other parts where there is a very great need and they are waiting on lists. I think it involves education of the public and education of the professional and I think also that it may be justified if an individual has a complicated auditory problem to get him to a place even one hundred miles away from where he lives, where his problem can be evaluated. This is done all the time and major medical centers have patients coming from all over the world for four or five days of intensive work-up and I think the patient benefits from this and then he returns to his community where he purchased the hearing aid and receives a long term service. I think there are ways of utilizing existing facilities which will bring the benefits of what the otologists and audiologists and the hearing aid dealer can offer to larger numbers of people. Furthermore, if I would accept the statement, which I don't, I don't think that you base what an individual needs on what is available. I know there are very practical problems, but I think that we have to think in terms of hearing as a medical problem, a disability, a problem having medical social, psychological ramifications. And if we agree that these services are necessary, let's see what we can do to make the best use of what is available and secondly, what we can do to expand what is going on at the present time. There is also a rapid increase in the number of audiological centers which are developing and the growth of speech and hearing professions has been enormous and we now have over twelve thousand members and the increase is very rapid and each day I hear about a new audiology center that is opening up. There are expansion programs going on in the number of centers so that I think the capability for handling more and more patients in the future by these setups will be increasing. We are in a period of rapid growth.

MR. DAVID DEMPSEY: You just gave us some statements as to the number of audiologists in the State and are these audiologists centered in a private practice situation or are they connected with a clinic or research facilities or where might they be found?

DR. MAURICE MILLER: All these things and more. They practice, as I do in a medical shool as part of a department of otolaryngology, they are in voluntary hospitals, municipal hospitals, rehabilitation centers, schools for the deaf, schools for the retarded, schools for the emotionally disturbed and they are in private practice. They are in public school programs and they are in colleges and universities which run community speech and hearing centers for the care of patients with disorders in the community as well as among the student body and they are in free standing institutions and they work in community supported agencies, chapters of the National Society of Hearing and Speech agencies, et cetera. They operate in many, many different kinds of professional settings. What is common though to the trained audiologist is his having met the certification requirements of his national organization and then he can practice in a variety of professional setups.

THE CHAIRMAN: A rather ubiquitous group.

DR. MAURICE MILLER: Not as ubiquitous as we ought to be as has just been suggested.

MR. DAVID DEMPSEY: One concern I have with your suggestion is that the changes in the bill requiring a trained audiologist or otolaryngologist to give an evaluation prior to the fitting of the hearing aid is that you in effect by that suggesting make medical examinations mandatory.

DR. MAURICE MILLER: Yes. And I think this is desirable and essential and I think ultimately hearing impairment is a medical and a health problem and the evaluation should start with a physician and starting with diseases of the ears, nose and throat. This has been the nature of my own professional experience for twenty years and I would not allow a member of my family to be fitted for a hearing aid or to be seen by an audiologist without a prior examination by a board certified or qualified otologist. I do this for myself and for the members of my family and I would hope that its value to the general hard-of-hearing community would be recognized. Hearing loss is a medical problem. Yes, sir.

MR. DAVID DEMPSEY: Persons with impaired vision are not required a mandatory and I put it in quotes "a mandatory eye examination by a licensed physician prior to being fitted with eyeglasses."

DR. MAURICE MILLER: This is true, but they do have to be seen by an optometrist who, supposedly, is trained in his five years of graduate instruction to detect medically significant conditions of the eye and he would then make the referral to an ophthalmologist which is a problem in the area of visual problems and I do not see any direct analogy to that arrangement in the field of hearing. I feel that the hearing traffic from otologist to audiologist to hearing aid dealer makes sense and there are many aspects of hearing aid problems and they occur when we least expect it and we have all missed our share, but there is less likelihood of failing to provide the kind of treatment a patient needs for the patient seen by a qualified personnel, in the order that I have suggested. This reflects what is happening in the community, at least in the large cities.

THE CHAIRMAN: Any other questions? Reverend Hall.

REVEREND HALL: You mentioned a physician as being trained and licensed to practice in this state. Are audiologists licensed to practice?

DR. MAURICE MILLER: Not yet.

REVEREND HALL: Will you reach such a thing?

DR. MAURICE MILLER: Yes. And the Executive Council of the New York State Speech and Hearing Association of which I am now president has endorsed the concept of licensing and we have a committee on licensure which is actively working on this. We are sponsoring symposiums throughout the state to elicit the views of our membership. We hope to present very shortly a licensing bill and we feel this is as essential for us as it is for others and who are concerned in any aspect of caring for the handicapped. We do endorse it. We have not yet gotten to this stage, but we hope to.

REVEREND HALL: What would you make the basis for such licensing; that he is certified by the American Speech and Hearing Association or an examination?

DR. MAURICE MILLER: Both. Both, sir. We will have an examination and there are various forms of licensing. I would try to recall the last one. I believe there is an examination by a Board of Examiners in audiology and there is a possibility that they hold the certificate of clinical competency and that must be considered an acceptable alternative, but that has not been decided.

REVEREND HALL: Is there any precedent for such a possibility in that the state would accept as a basis for licensing certification by a professional organization?

DR. MAURICE MILLER: This is under investigation and I can't give you an answer. I doubt it.

REVEREND HALL: I am not a lawyer.

DR. MAURICE MILLER: Nor am I, but we will have legal counsel to assist us on this and I suspect we have an examination in addition to this.

REVEREND HALL: You are making the recommendation now that the state just certify or license in effect anyone who is certified by the American Hearing and Speech Society by putting that qualification in here and that would be tantamount to licensing without a license and examination?

DR. MAURICE MILLER: It's really based upon people who would be excluded. It comes under the exemption category on page 17 and it comes under the section that deals with the composition of the board. I am not sure you would get into that question until you are faced with a licensing board of speech pathology and audiology. I was suggesting a way of clarifying what an audiologist is which has national meaning and is uniform and I suggest this is the best we have available, in the absence of licensing in all of the states. There is only one state now that licenses speech pathologists and audiologists and that is the State of Florida and other states are considering it. When licensing becomes widespread, we might see the licensed audiologist or speech pathologist. We don't have it in New York State yet so I am suggesting what we do have and that is a certificate from the association.

REVEREND HALL: The most important recommendation you made is in the flow of services that takes place. The professional services of the audiologist should be included and that the audiologist be a certified ASHA audiologist. So in effect you are getting something that would be tantamount to licensing by the state and you would be asking the state to endorse and accept the certification procedure, the organization for which I don't believe there is a precedent.

DR. MAURICE MILLER: I know as a practicing audiologist that is what will benefit the hard-of-hearing population at this time and as one who lacks legal expertise, I couldn't comment on your statement that this would be the equivalent of licensing. I think it's the best standard we have now.

THE CHAIRMAN: Any other questions? (No response.) I want to thank you, Doctor, for taking your time to come here and testify before us. We have another member, Mr. Sullivan. But before Mr. Sullivan speaks, Assemblyman-Elect Steinfeldt has to leave us and he would like to make a short statement.

MR. WILLIAM STEINFELDT: I appreciate very much hearing the testimony today and in meeting with all of you who are so interested, as I am, in the problem of the hard-of-hearing and of the deaf. I hold licensure also from the State Education Department and in a totally different field and, I believe, I have some understanding of your problems and I appreciate very much hearing what you have to say today. Thank you.

THE CHAIRMAN: Thank you for being here. Mr. Sullivan, will you give us your name and address and your affiliation for the record, please?

MR. ROY F. SULLIVAN: My name is Roy F. Sullivan and I am affiliated with the New York State Speech and Hearing Association and I am the chairman of the committee on hearing care under Medicaid for that organization and my home address is 1111 Ocean Avenue, Brooklyn, New York.

Mr. Chairman, Reverend Hall and ladies and gentlemen of the Temporary State Commission to Study the Problems of the Deaf. I would like to relate to you, if I might, some of my background and qualifications as an audiologist. I have considered myself a professional audiologist for seven years and have been practicing for that time in New York City. My bachelor degree was obtained in Speech and Hearing Education at Brooklyn College in 1960 and in 1962 I obtained a master's degree in the area of audiology and special pathology. For the next year I did non-matriculated study in the areas of audiology and architectural acoustics and acoustical engineering and psychology at Columbia University. From there I was one of the initial matriculants in the PHD program in the psychology, experimental psychology relating to hearing, at the City University of New York and where I am currently in the throes of getting a dissertation. I possess the certificate of clinical competency and audiology from the American Speech and Hearing Association and by virtue of that I am listed with Physician's Registry, having a number on the Medicaid program to do diagnostic treating on physician's referral. I am chief of the Division of Audiology in the Department of Otolaryngology, Long Island College Hospital in Brooklyn. I am also a member for six years at the graduate faculty in the Department of Speech at Adelphi University in Garden City, where I have taught audiology and speech and anatomy and physiology, hearing aid diagnosis in the graduate and undergraduate division. I have also held in the past instructional appointments in the graduate school at Columbia University and at New York University and in addition to training audiologists at Adelphi University, I also hold the appointment of clinical assistant instructor at the Department of Surgery, Down-state Medical Center, State University of New York.

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As a part of that facility, it is my responsibility to instruct physicians in training, that is, resident otolaryngologists in the problems of otology, which are many, related to research and to diagnosis through rehabilitation and which, of course, includes the problem of hearing aids. I am in addition a member of Mayor Lindsay's task force on noise control and I have even upon request been known to give an occasional lecture to the New York Hearing Guild on otology as Mr. Gilbert gave the credit for in the earlier proceedings.

With that background out of the way, I would like to compliment the Commission on what I think is a fine bill and I think it is an excellent beginning. To my mind the purpose of licensing is to foster and protect the best interests of the public and in this specific instance, we are fostering and protecting the best interests of the specific segment of the public which crosses age, which crosses sex and which crosses denomination -- the hard-of-hearing. Now, there has been much said on the part of the witnesses today about the lack of complaints, the word fraud has occurred frequently and in context. There is something about the word complaint or the word fraud which has a decidedly negative meaning. Nihilistic connotation would be more correct. In my mind a licensing bill should promote a more positive state of affairs. We should be thinking more positively in promoting the business interests of the hard-of-hearing public rather than to try to prevent them from being victims of fraud or deceit or deception which, as the dealers who testified here before me have indicated is the rare cases of it or in the minute. We should be concerned with promoting the business consumer interests rather than preventing consumer fraud.

Now, there are three major areas. There are other areas, but three major areas in which problems arising concerning the hearing or potential hearing aid user and these are the area of health, the area of communicative well being and the area of economics. It is my belief that any licensing bill should promote the best interests of the hard-of-hearing consumer in these three areas rather than simply with a blanket trying to prevent fraud. We should be working at inside elements of tolerance rather than outside elements. We should be trying to promote the highest quality of care rather than trying to prevent the lowest quality of care.

At the outset, before I enumerate specific instances under these three categories of health, communicative well being and economics, may I say that I espouse the team approach; that is, the incorporation into the care, the total care of the hearing impaired patient of both the qualified otolaryngologist and not merely a specialist who decides to specialize in the ear without the training and the proper credentials, but the certified or certificate eligible otolaryngologist, the qualified conflict of interest free audiologist that is one who does not purvey a product but only a service and who is interested in serving only the hard-of-hearing and the deaf and also the hearing aid dealer without whom we cannot do -- they are an integral and essential part of the team and no one of the three members mentioned in this team desires to take over the responsibility of the other. The audiologist does not want to sell hearing aids, he does not want to deny the hearing aid dealer his right to purvey his product, much needed to the customer; he does not want to take the responsibility away from the otolaryngologist in diagnosing and treating of hearing problems. He is content to do as much as he can as an intermediary between the otolaryngologist and the hearing impaired patient and the hearing aid dealer offering his services as he is best qualified to do in the areas of research in hearing and research in hearing aids and in the areas of research and diagnosis in the areas of selecting of hearing aids and new methods of evaluating hearing aids and in the areas of rehabilitation of the hearing aid user and also those with deafness to produce sound to benefit from hearing aids. When we say sensory neural deafness, it is on a continuum, ranging from normal hearing to total anacusis, where there is absolutely no response of an auditory vein which might be helped with prosthetic amplification, although there are cases where we have fitted individuals who derive an awareness or a tacit awareness of their environment through the use of prosthetic amplification and they actually sense or feel their environment amplified through the hearing aid rather than being lessened by sensory neural deafness. We do not hope to restore hearing and it is my feeling that no audiologist or otologist will ever purport that a hearing aid will restore the individual, one stricken with sensory neural deafness or becoming neural deaf to a state of complete normality. It is a compensatory device. It is a prosthesis and it is a help and it is an aid and a hearing aid and not an answer or a cure. It must be taken in stride with the appropriate diagnosis and the appropriate consideration of the underlying cause and effect and with the appropriate psychological attitude and with the appropriate consideration of social factors and economic factors and acoustic factors and all of these must be taken into consideration.

Now, I would like to go through some specific problems and here am I promoting the positive and speaking of problems, but I think it is best to point up specifically three areas and instances within these three areas which should be looked toward in conjunction with the licensing bill that they may be covered by whatever way the Temporary State Commission sees fit or by whatever way the legislature sees fit.

The system that has been proposed of including compulsory licensing for the audiologist, all the questions of hearing aid fitting, one of the reports of the Temporary State Commission on the Deaf, the Price-Waterhouse survey done in 1968 says that there were thirty-two thousand to sixty-five thousand hearing aids sold annually in the State of New York. When you put this across two hundred and seventy-three dealers, the proportion of two hundred seventy-three to thirty-five thousand is not greatly discrepant with the proportion of one hundred seventy certified audiologists to thirty-five thousand hearing aids. So this ratio is something to be considered as well. The fact there may appear to be fewer audiologists or perhaps even fewer otolaryngologists and dealers in the State of New York is at best a weak argument for not including the professional conflict-of-interest-free services of the otolaryngologist and the otologist into the hearing aid recommendation.

Under the area of health there are three areas and I perhaps should not be speaking to you of the area of health. Perhaps in my place there should be a board certified otolaryngologist of the science of otolaryngology in the State of New York here to testify as to what the problems that may be encountered in hearing aid fitting. What I will do here is apprise you of some of these problems and perhaps it's up to all of us in this room jointly to consider the answers to these problems. First, under the heading of health is the surgical correctable loss of hearing. We must consider in this bill some safeguard to be included which, if not, mandates the fact that a customer coming in off the street to purchase a hearing aid which he can do anywhere in the United States, generally if he is over the age of sixteen in some states with that codicil in the licensing bill, can purchase a hearing aid without ever seeing an otolaryngoligist or a audiologist and it is possible that this individual may have a surgically remediable or personally reversible loss of hearing obviating the necessity for the purchase of a hearing aid and if it is a progressive condition obviating the necessity for repeated purchases of hearing aids of increasing magnitude and power and gain and in order to compensate the progressive nature of the loss. The prognosis of the loss through appropriate otologic amplification of therapy or surgery would be most advantageous. This information should be conveyed to the hearing impaired and at least it should be conveyed to the hearing impaired. There have been systems proposed for the conveyance of this information, but minimally the dealer must be qualified to recognize the fact that a surgically correctable loss of hearing exists. This amount to a diagnosis and in your bill in one of the sections cited earlier by Dr. Miller, it suggested that the hearing aid dealer should not be tested on matters of diagnosis so that therein lie a paradox. He should be able to pick up operable hearing losses and apprise the patient. Ideally he should be left on his own recognizance to apprise the patient. But somewhere along the way we have to be assured that his education is of a high enough level that he will be able to be left to his own recognizance and be able to convey this information to the public. If we accept the solution to the problem that all hearing aid candidates must see an otolaryngologist and an audiologist, the need for this special training and individual testing of the dealers and leaving him to his own recognizance, the responsibility is lifted from the dealer's shoulder and it is brought on the shoulder of the team, the otolaryngologist and the audiologist and the dealer team. The second point is a loss requiring medical attention and this is not the same as a loss which may be totally reversible by the ear, nose and throat physician. A chronic otoblennorrhea, that is a repeated recurrent infection of the ear which is progressive, causing a loss of hearing and its advanced stages, may be so satisfactorily fitted with a bone conduction hearing aid. I would fit, if referred, a patient by an otolaryngologist and I will only fit a hearing aid through the expressed permission of the patient's physician or otolaryngologist. This bone conduction hearing aid will easily answer in many cases the need of this patient and not cause danger to the condition. On the other hand, if someone less knowledgeable perhaps in this area than one trained as myself decided to fit a posterior-auricular or a behind the ear type hearing aid on this condition, the essence of what happens, although medicine is not my practice, if I approximate it as closely as possible, the ear mold plugging up the ear produces a little greenhouse all its own, where the infectious matter proliferates at even a faster rate thereby promoting infection to a greater degree. So it is incumbent upon the dealer and upon the audiologist and, of course, the otolaryngologist to recognize a chronic condition when it is seen and to take the appropriate course of action which is to either administer treatment, if you are an otolaryngologist or to send the patient for treatment if you are an audiologist or a dealer. If this response is left individually to the recognizance of the dealer and the audiologist, this is a heavy weight for the shoulders of one specialty and much too complex for the professional to bear. With a mandated team approach the responsibility is shared and we are able to gain the best of all fields and many years of commercial experience of the dealer and the intensive technical training

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of the audiologist and the skilled knowledge of the otolaryngologist.

Thirdly and perhaps most serious of all are those conditions which endanger life; specifically, the form known as retrocochlea in the form of the eighth nerve tumors, tumors of the cerebrospintine angle. These are neoplasm tumors which grow within the brain and within the confines of the skull whose initial manifestation may be nothing more than a mild one-sided unilateral loss of hearing and/or a total unilateral deafness with no complaint on the other side. This may be the earliest occurrence of the condition which grows and which expands and this will not only involve audition, but taste, touch, motor function and eventually the very life giving function of the medulla and the cerebellum and then there is the heart and the respiration and if not caught by the neurosurgeon or neurologist in time results in a loss of life of the patient.

A heavy responsibility again lies on the shoulders of the dealer to make the diagnosis that this unilateral loss may be retrocochlea pathology and the same holds for the audiologist in his communication with the team approach. We again have the best expertise of all three fields and to try and cover the problems. There have been technological advances with the joint efforts of the audiologist and the hearing aid dealership and it has brought about a new device anachronistically referred to as the Cros, C-R-O-S. Mr. Dunlavy, one of the dealers, has been instrumental in doing quite a bit of work with this instrument. The aid is designed or was designed initially and presented initially for the fitting of total unilateral deafness. In a sense it has been a blessing and in many cases of sensory neural deafness which could not be fitted with prosthetic amplification. Considering the flexibility of the Cros hearing aid to unilateral hearing loss and the first sympton of a brain tumor involving the auditory system being a unilateral loss, I would hate to think that the expedient availability of this type of hearing aid would lead to the easy fitting and dismissal of early warning symptomatology of an underlying brain tumor. The team approach would fit in here rather well.

There is one point under the topic of communicative well-being and that is simply the problem of which or the problem or the crime or the offense or the exception of which all three disciplines are at times guilty, that is the audiologist, the otolaryngologist and the dealer and that is the problem of misfitting. Now, there are many varieties of misfitting. There is underfitting where you use too little amplification, whatever be your motive and there is overfitting where the hearing aid is far too powerful to be tolerant and wind up in the bureau drawer and as I tell my elderly patients "There is no known anatomical pathway extending from the bureau drawer to the ear." And the problem of misfitting must somehow be covered in the licensing bill if we bring the team approach to bear as in a uniform philosophy with our joint expertise focused on the hard-of-hearing population. Without consideration for this expediency, this necessity for fitting hearing aids on people with thirty year hearing losses, they first come into the office having decided to consider prosthetic amplification. He is not going to suddenly change his mind two days later. So there is time to get on the waiting list to see the dealer, to see the audiologist and to see the otolaryngologist as the case may be. So much for the problem of fitting.

Again and generally, the area of economics. Here we have the problem of unnecessary fitting; that is, the fitting of one hearing aid where none will do and this includes the patient with normal hearing as well as the patient with no hearing. It also includes the purchase of or sale of -- the description or recommendation of two hearing aids worn simultaneously and where one hearing aid will do.

In summary and in conclusion, if we consider these three areas, health, surgically correctable hearing loss and loss requiring medical attention endangering life, the area of communicative well-being and misfitting and the economic interest of an unnecessary fitting and try to incorporate these factors into our particular licensing bill, it is my belief and I believe the belief of the audiological community represented by the New York Speech and Hearing Association that the best interest of the hard-of-hearing and the deaf will be served. Thank you.

THE CHAIRMAN: Thank you, Mr. Sullivan. In your judgment, do you believe that we do have enough audiologists in the State of New York to perform the duties that you would suggest and Dr. Miller suggested to the people of the hard-of-hearing and the deaf?

MR. ROY SULLIVAN: Yes, I do. I believe that we can always use more than we have, but I believe that if we will accept the philosophy that there is no eminent need to fit all thirty-five thousand patients that are going to be fitted in 1970 on January 31st and that we are willing to set up priorities through the year, that we can serve the best interests of the hard-of-hearing public.

THE CHAIRMAN: Any other questions? Mr. Benowitz.

MR. STANLEY BENOWITZ: How long does it take the person needing an examination to come to the point of fitting?

MR. ROY SULLIVAN: It may be as rapidly as a one day affair. Where a patient may come in from out of town and to visit an otologist and the otologist will immediately examine the patient and send the patient to an audiologist and the audiologist will evaluate and recommend and let us say it is a surgical inoperable loss of hearing, where the patient has excellent discrimination and perhaps he is even a sophisticated hearing aid user and he has had experience with hearing aids in the past and if the dealer has this instrument in the stock and the patient has the ear piece, which is not worn and which is not shrunken with age, a fitting could be made the same day, if this patient has no need for rehabilitation in its many forms. This case is the vast exception. At the other end, we have the patient with sensory neural deafness of such a magnitude that amplification of the highest facility and quality can only bring him an awareness of the sound in its environment. He may be able to discriminate only vowel sounds and no consonant sound. He may, without the aid of the audiotory training, and by the application of speech reading or lip reading be able to sense that from a combination of the visual and sensory modality and the auditory sensory modality, sixty or seventy per-cent of all conversation is understandable. This therapy with lip reading may go on for years. It does not take years to fit the patient with a hearing aid, but it may take years to rehabilitate him to his maximum potential and to derive a full use of the amplification. If it is a sensory neural deafness once the cause of the auditory factors are realized and found to be amenable to rehabilitation in one or two months, the other may be never fully rehabilitated.

THE CHAIRMAN: Is it possible for the same individual to be an otolaryngologist and audiologist and dealer?

MR. ROY SULLIVAN: According to the ethics of the Medical Society and the ethics of the New York State Speech and Hearing

Association and the American Speech and Hearing Association, no.

THE CHAIRMAN: Within the confines of the thinking of all of the groups you have mentioned, is it possible for the same individual to be an otolaryngologist and an audiologist?

MR. ROY SULLIVAN: There are a number of otolaryngologists in the State of New York who could qualify as audiologists,having received or made it their business to receive essentially the same training.

THE CHAIRMAN: Any other questions further on this? (No response.) Thank you very much, Mr. Sullivan for taking your time to be here. The next gentlemen we have is a Mr. Springer.

MR. HAL SPRINGER: Thank you, Mr. Chairman.

THE CHAIRMAN: Give the Commission your name and address and affiliation for the record, please.

MR. HAL SPRINGER: My name is Hal Springer and I have my business in Kew Gardens, Queens, as a hearing aid dealer and I have been there for fifteen years and I live at 1 Charles Road, New Hyde Park. Mr. Chairman and members of the Commission and colleagues. Following the very learned Dr. Miller and Mr. Sullivan, I feel a little shaky but I feel it is so important that we do not skim truths and as you all know, friends, here, that I am a bit of a maverick. I am the founder of the State Hearing Aid Organization and of the City Hearing Aid Dealers Guild. We worked as a small nucleus many years ago and today you have a wonderful organization, both state and city, of which I am not a member, I have resigned. And yet in resigning I did this only because I myself was seeking the truth, which I feel you people do not have and would not accept what I felt was the truth. So forgive me if I try a little bit here to elicit some of the facts as I see it.

I was the original member of the committee that signed the Code of Ethics and when we met in Barnett Levy's office, I had it in my power to kill this Code of Ethics because Barnett Levy said unless we eliminate the word and make it illegal to use the word certify he refused to go on with the ethics committee. He felt it was totally misrepresentative and I was at odds there and I wouldn't give in and he said, "Well, fellows, if he will not go along with it, then we have nothing. And we feel it's completely out of order." I said I would go along with it if one thing, you will say that this is the beginning of licensing, where we begin to have a character not as a dealer but as a responsible professional fitter of hearing aids. And we have that and assume the responsibility that the connotation of that name gives us. Then, I feel that we are in the right direction. And I was assured that licensing would be a possible thing for the future but that we should take the first step in the Code of Ethics and it was understood that the Code of Ethics was merely a control of those people who advertised and promoted to the public their wares and the items they had for sale and used the various incentives and gimmicks that would stimulate the public to come into their individual offices or ask for the individual offices to send people to their homes to sell them a hearing aid. And I have always felt that you don't sell a hearing aid because when you are a salesman and I have done a lot of selling, you cannot help it in selling to fabricate,you are really meaningfully and with dedication wanting to help this person, but you are selling and this inference and this thought you never lost. This results in problems of fitting. The Code of Ethics only controls this and it gave no standards as to the manner of fitting, the type of tests to be given and the trial necessary and all the requisites to really be sure that the person you are fitting would really be happy. We know that no hard-of-hearing person is happy wearing a hearing aid. But at least we could assure the individual that we helped that we were giving him the best possible for their individual problems. So we went along with the Code of Ethics and even seven or right years ago and I spoke before our group here of which I was the president and shocked them and said we will ultimately have licensing and, of course, they still remained friends but they disagreed with me very strongly and felt this was an encroachment on their rights, a limitation on their ability to sell and this was not in the realm of their thinking.

I feel the connotation, even the Code of Ethics, that you shouldn't wear a white jacket is unfortunate and it goes back to the times when we had many more charlatins than we have today. There were some who put on the front with the white jacket, some who fit a sick ear and then went to a dry ear and a child's ear and somebody else's ear with the light not being clean. I really feel we are all interested in helping the hard-of-hearing public, but we have not had standards set up and this is what licensing should do for us. I don't want to inhibit my colleagues. I want us to flourish because I feel that if we flourish then the young people that we are seeking will join us and do the work that is so necessary and useful and that is so rewarding today for the young people who are looking for something to do to help people and so to speak to love because in essence if you really love them you are not going to put a dirty light in their ear or give them a fitting and let them take a fitting unless it is correct. It gives you a standard and it gives you an ethic which puts you in an area that you don't have to advertise and you don't have to mislead because you get it back in return from what you are giving. I am sure we are all seeking to do this.

Now, my learned colleagues who spoke prior to myself and I shouldn't say colleagues, I should say people whom I am proud to work with and whom I have known for many years and respect, yet I feel that they are seeking to legislate us a little out of business or to enhance or enlarge their own area of work because they have this academic background which, many of us don't and which many of us now are seeking and I feel that we should work with these people who would put so much into their work but they, I think, should evaluate people, not hearing aids. I think our job is to evaluate ourselves and our work in evaluating hearing aids and through licensing which would make it not exactly mandatory, but would elevate us in our abilities, give the young people a feeling that we are not transient salesmen or promotors which obviously we have to be. Then we have got something that is a beautiful thing for the hard-of-hearing people because it would be, I feel that we can sit down with people like Dr. Miller and Mr. Sullivan and know this is the area that we work in because licensing has spelled it out and this is the area that they work in. These are the things we can expect of you and this is what you can expect of us. It should be that simple because all we are actually doing in our work here in most cases is really enjoying, helping and seeing the wonderful things that can come to people that we help and we shouldn't lose sight of this.

Now, Mr. Sullivan spoke about improper fitting, the good ear, the ear that doesn't need the hearing aid and bilateral hearing and sometimes an ear that is improperly fitted. I am sure with his ability he has recognized what might have seemed like fraudulent fittings, but I don't think that ninety-nine and nine-tenths of it is fraudulent fitting, it is merely a lack of knowledge. I have actually had people who didn't need a hearing aid, but they wanted to wear a hearing aid because the outside noise made the inside noise in their heads less annoying and there are some outright cases, but it's very rare, but can you imagine if you helped us in your licensing and we would both together know where we stand and we would encourage this working together and then the people you are seeking to help would be really and truly helped. Now, in the fitting again and here I am now referring to Page 16 line number 7 referring to the hearing aid which is not new and is sold and there is a question and you get an aged person and first of all she resents getting the hearing aid and then when you put it on she reacts to the least amplification. She is not accustomed to this and usually she is getting a noise because the amplification is forty db higher than she is accustomed to and even twenty. So you give her maybe ten db amplification and just that she will get some gain and the next week or so she will come in and you will give her more of a gain. Or you may unwittingly fit somebody wrong. But if you have a standard that you sell nobody a hearing aid because truthfully nobody or none of us here will sell anybody a hearing aid that really doesn't want it. But the thing is we are salesmen and if we had the connotation of a hearing consultant and we told this person and we didn't have to tell him, but you are renting a hearing aid or we are loaning it for you for one month's time and we will work with you and if it's successful you pay the difference for the hearing aid and if not, you pay for my services. You then inhibit the ability of many people and this has been brought out

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nationally and I think even Mr. Sullivan brought it out that he believes in a rental or a trial program because the best of us, including Roy and Dr. Miller, cannot truthfully say this hearing aid is the one for you. We must wait and we must see the acoustic conditions that these people live under and what their changes and whatever might be happening. I do feel that this should be given serious thought because in this area here you are helping the salesman who doesn't like to rent a hearing aid, frequently, because he wants to make that sale and get out to the next sale and maybe he will tell the person "you come into the office if you have a problem," but if he has to see that that person is hearing proper or they are going to return it then he is not getting the three hundred dollars and he is coming back again and again to make sure, but if he does love that person real good and his mind is going to work to help them he will help much more than if he had the money and really with the best of intentions if he has the sale made and he isn't quite the same with the reaction as if he has to wait to see whether or not it is a matter of time. This is an important consideration, sir.

Now, relative to the problems spoken about, the possible illnesses that cannot be discovered or we are unable to discover, there are many of us who have increased our abilities and learning and one gentleman here a month ago discovered an acoustic neuroma, a fellow who academically is, and I guess I have a little academic background, but he learned and he was interested and he found something because he learned and I want to learn and I think all of us want to. This is how I feel about our area and how we can qualify and given standards and given the responsibility and the recognition, not the phony recognition, but the true recognition of the responsibility then we have to grow into what you give us and this can increase with time. Thank you.

THE CHAIRMAN: Thank you, Mr. Springer. If I were to conclude, your remarks would support legislation that would set up licensure of hearing aid dealers?

MR. HAL SPRINGER: Definitely, sir.

THE CHAIRMAN: Could you tell me this, do you have any knowledge of any dealers in the State of New York that do rent hearing aids?

MR. HAL SPRINGER: Yes, sir. They do.

THE CHAIRMAN: They do?

MR. HAL SPRINGER: Yes, sir. Mr. Dunlavy, who is a very old-timer and has put as much time to the business if not more than I have myself.

THE CHAIRMAN: So it is not a new concept?

MR. HAL SPRINGER: No. It is being done through the country more and more and actually the clinics with all their facilities and ability still will ask the hearing aid consultant. I would like to lose that title dealership because it's a wheeler dealer connotation and I would like to get a better name. It isn't a dirty name to be a consultant, a professional. A doctor is a salesman and a lawyer is a salesman, but let us be recognized as professionals and then assume that responsibility and put us in this area and let us grow a little more. We certainly have to grow more and let us be real close to the clinical audiologist and the otologist and I think we can do a great job.

THE CHAIRMAN: Thank you for taking your time to come here, Mr. Springer. Mr. Strail has one question.

MR. CARLTON STRAIL: In some states in the schools for the deaf children when they are brought to the school they are properly fitted for a hearing aid. Others are wearing one and it is the latest tested by the schools and some show that they would not in any benefit the child. Parents tell both the school supervisor, and classromm teachers that the hearing aid dealers insisted that it was the best thing for their child. Those dealers are obviously making a profit playing on the emotions of the parents and their ignorance. Now, regarding the audiological terminology and the proper tests or the proper testing procedure, if licensing was required, would it not be the kind of a thing to eliminate this activity or this sort of thing being done?

MR. HAL SPRINGER: All I can say is that right now if you have licensing in this state just for this purpose it would be unnecessary. There is none of us here, I am sure, in the area that I know that would ever fit a child, I mean all of us having worked with these people and known these people over many years. This has happened in the way out or somebody who unwittingly gets in on a two month basis, but each individual I know here couldn't be in a situation to let that happen to someone who gets it for a month or two. If he is aware of this, he might try to do it, but if it comes to the attention of his employer, it would never be permitted. Licensing would help by making this an additional item that is mandatory and rather one month or two months training which might have a two year apprenticeship and protect new people from having such a thing happen.

THE CHAIRMAN: Father Hall.

REVEREND HALL: Some of the testimony today has indicated that you have a small number of people coming into the field and the opinion was expressed that licensing would just increase the problem. Now, am I correct in concluding from your statement that a sense of status or recognition, a certain guarantee of standing outside of the businessman's standing would possibly do away with that problem and attract people to the field?

MR. HAL SPRINGER: Well, let's say this, the dealer per se has gotten a terrible identification. Even today where I don't think we rate it and I do not think that the state does, but the background of so many things that happened because new people come in. You go to the horseraces and everybody is a winner and there are no losers but you can only hear the losers, I should say rather, but everybody is supposed to be a winner and there are very few people who admit they are losers. I am very fortunate and I have two young people working for me, my son and my son-in-law, and many people come in to me and say how did you get your son and your kid to work with you. They usually hate to work for the old man. I have tried to kind of dish my way out and to date, believe it or not, there is a great deal of desire to do something useful and they are doing something useful. I in my own personal way feel we are certified hearing aid consultants. We are referred to as consultants and when somebody tells my son he has not been selling them, he says, yes, I lost that one. When a young person feels that he is doing something useful and he gets paid well for it, he deserves it if he does his job right and responsibly. Being licensed we can remove the connotation of dealer, which does happen in the curriculum and my son has been taking a course in school on otology and he wants to improve himself and he says the connotation

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versus the dealer is bad and he says that people have a sly grin when they talk about the dealer and you can't trust the dealer. And if we have an identification that is meaningful, then we will do a meaningful job. Thank you.

THE CHAIRMAN: Thank you. This concludes the list of those who wish to testify. Is there anyone here now that would like to testify here before the Commission? If not, that concludes the hearing in Rochester and as you may know we have another hearing scheduled in the City of New York.

MR. PAUL DROZDOW: I would like to say something, if I may.

THE CHAIRMAN: Take the seat and give your name and address please and your association. We will accede to your wish if you wish to testify before the Commission.

MR. PAUL DROZDOW: My name is Paul Drozdow, I am from Binghamton, New York and I represent the Belltone Corporation as a dealer. Of course there are times that we think that comments that are important to us may prove to be unimportant to the listener. However, I would like to throw these few thoughts out because they are something to think about and dwell on for the Commission and various other people who are present here. This is my first experience with a hearing of any kind and so I may be somewhat naive about the ultimate purpose of these hearings, although, I assume, that the purpose of this particular hearing is to honestly examine all those things involving a particular area and to sift out whatever information comes forth so that in this case the individuals who are handicapped individuals who are dependent on the honesty and responsibility of those who give them service and who present themselves in that light will benefit to the best possible degree. As in most discussions involving areas of special interest, each special interest has its own program and ostensibly to benefit the one who ultimately needs a service, but in the process individual axes are ground. I don't think anybody here denies the need for handicapped peoples having a positive sense of reliance on those on whom they come to depend for a service. There is no doubt in my mind that the whole area of the hearing handicapped, the individuals who possess hearing handicaps having to rely on a multitude of functions, including the otolaryngologist and the audiologist and the hearing aid dealer. However, merely in terms of the total number of handicapped individuals who are seeking a remedy for their handicap and as opposed to the total number of individuals both academically trained and trained by imperfect experience and pragmatic knowledge, the total number of people involved in the service areas are pretty limited. There is absolutely no doubt about that. And the total number of dependent people is vast. If we can take federal figures as being relatively exact, based on the census and other devices for checking the needs of special groups within the population, if it is true, that ten percent of the population of this country consisting of a population of two hundred million people, and this is a relative truth, so then there are approximately twenty million in this country who are hearing handicapped. It would be ideal to reach all because all of us would have to be terribly insensitive to a problem which disassociates this type of handicapped individual from a normal conventional and satisfactory relationship to his environment. So I think that I personally feel that essentially all those people involved here in seeking to assist or ameliorate, essentially having a very honest motive in doing that. Now, let me go back to a question that Chairman Cerosky asked. He asked how many otolaryngologists are there and how many audiologists are there. There are one hundred seventy-five audiologists and four hundred otolaryngologists. The population of the State of New York is ten million, approximately.

THE CHAIRMAN: No, seventeen million.

MR. PAUL DROZDOW: I am only a newcomer to New York, so I haven't been filled in on the total population. However, seventeen million and if you take ten percent of that we have a very vast number and it is a physical impossibility at this time with the limited facilities that we have for training, both audiologists and otolaryngologists to meet the individual that requires hearing aid help. Now, many of these people have gone through the procedure recommended by speakers prior to me, and have seen an otolaryngologist and have had an appointment made with a specialist on hearing. But my personal experience in an area in which there are approximately fifty otolaryngologists is that an appointment for an individual to see the otolaryngologist may vary from six to eight weeks and my experience with a local speech and hearing center is that the appointment level is approximately as long as my arm and from the time of the initial contact with a hard-of-hearing individual in my area, who has gone through the entire process, looking at it most optimistically, there can be as long as two to three months involved. In the meantime, this individual feels that he has a more current need for hearing better and he often by-passes both the otolaryngologist and the speech and hearing center and selects for himself a hearing aid dealer on the basis of the recommendation of others he knows who are wearing hearing aids and functions well. It seems to me that because of the fact that there are limited facilities and limited numbers of individuals trained to perform in the field of otolaryngology and in the field of audiology that licensing at this time would be a hampering influence on the efforts to take care of the ultimate subject of this meeting. That's all I have to say.

THE CHAIRMAN: That's a conclusion that you have made.

MR. PAUL DROZDOW: Yes.

THE CHAIRMAN: It may not necessarily be the conclusion that we reach.

MR. PAUL DROZDOW: No.

THE CHAIRMAN: All right. Thank you very much for your taking the time to testify. We are certainly concerned with the testimony and it will be included. I think there is one more question.

MR. PAUL GILBERT: Is a transcript of this meeting going to be readily available?

THE CHAIRMAN: A transcript of the hearing will be available for the fee that it costs us to have it made and we are limited in funds and by virtue of the budget and consequently we don't have them to hand out and we will have to charge whatever the fee is for us to have them produced and that is exactly what you can have them for.

MR. JOHN ST. JOHN: My name is John St. John, Rochester, New York. Is it constitutional to insist that a person see a physician before he can purchase a hearing aid? We have people who are Christian Scientists who don't go to physicians.

THE CHAIRMAN: I don't think that is a question that anyone here can answer. The Court would have the final determination of that question. Mr. Gilbert.

MR. PAUL GILBERT: With all due respect, the meeting was to stop at five and it is just a few minutes after four, sir, and may I ask your indulgence in view of the fact that Mr. Guttman yielded his time to me, can I take the courtesy of three or four minutes in what might have well been some misconceptions given to the Board?

THE CHAIRMAN: Mr. Gilbert, I don't wish to infringe on anyone's rights or time or presentation that they would like to make to the Commission. As you know we are having another hearing in the City of New York in January and I believe it's the 15th of January and I would suspect that you would perhaps be at that hearing.

MR. PAUL GILBERT: Oh, yes, indeed, sir.

THE CHAIRMAN: Fine. Would it be much of a gesture to ask that perhaps you can hold your comments for that meeting because there are many that have to catch airplane flights.

MR. PAUL GILBERT: I yield to that, sir.

THE CHAIRMAN: I am trying to accommodate them. I know some of you have had to take time to be here and, so, if you will, Mr. Gilbert, at that time, make that presentation.

MR. PAUL GILBERT: Very well.

THE CHAIRMAN: Being no further witnesses before the Commission at this time, I hereby declare the hearing closed. I just want to take this opportunity once again to apologize to you for being late. It was something that happened beyond our control and I want to thank you for taking your time to be here and giving this hearing your valuable information so that we can consider all of your testimony on this important legislation. Thank you.

APPENDIX M

Proceedings of the Commission's New York City Public Hearing on the Licensing of Hearing Aid Dealers and Fitters.

TEMPORARY STATE COMMISSION
TO
STUDY THE PROBLEMS OF THE DEAF
REGARDING HEARING AID LICENSURE

on

January 15, 1970

at

10:00 o'clock A.M.

at

270 Broadway
New York, New York

B E F O R E:

ASSEMBLYMAN RICHARD CEROSKY, Chairman
ASSEMBLYMAN SALVATORE GRIECO
ASSEMBLYMAN EUGENE LEVY
SENATOR JESS PRESENT
MR. DAVE DEMPSEY
MR. BOB MORRIS
SISTER NORA LETOURNEAU
MR. STANLEY BENOWITZ
MR. CARLTON STRAIL
MR. MAX FRIEDMAN
MR. TED HOWES

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PROCEEDINGS

THE CHAIRMAN: The hearing will come to order.

The purpose of this hearing, held by the Temporary Commission for the Deaf of the State of New York, is to determine merits or demerits of the bill to license hearing aid dealers and to hear any proposed changes, supports, or nonsupport of the bill.

I will introduce to you, from my left to my right the Research Director, who has researched this question, Mr. Morris, and Counsel to the Commission, Mr. Dempsey. A member of the Temporary State Commission, Sister Nora, and myself, Mr. Cerosky. To my right is a member of the Commission and also a State Assemblyman, Mr. Grieco. Mr. Strail is a member of the Temporary Commission. Mr. Frideman is a member of the Commission, and Mr. Benowitx is the Staff Coordinator of the Commission for the Deaf.

Just walking in and sitting down to my left is Assemblyman and Commission member, Assemblyman Levy.

With that we have a long agenda for today's hearing, so those of you who have statements which you prepared and wish to leave with the Commission, we will accept them. If you wish to be brief about your statement, we will be sure that the entire statement is included in the minutes of this hearing. If you wish to just point out certain parts of your prepared, filed statement, we will accept that as the total statement.

With that, we will get right down to the purpose of the hearing and ask Mr. Dunlavy if he will come up and sit to the left. We are a bit crowded in this room, but we are going to try to move along.

MR. DUNLAVY: I would always rather not be the first speaker.

Assemblyman Cerosky, members of the Temporary State Commission to Study the Problems of the Deaf, my name is Alfred R. Dunlavy.

When I testified in Rochester on December 11, 1969, I gave my background in this field, and therefore, at this time, I believe it would suffice to say that I have been in the hearing aid field for thirty-six years, and have been a hearing aid dealer since February 10, 1936--thirty-four years minus twenty-six days.

Again, I would like to take this opportunity to congratulate the Commission for the depth of study in comprehensiveness with which it has prepared the proposed licensing legislation.

As I previously stated, for many years I have been a strong proponent of a fair and equitable licensing law, and I was one of those who helped to formulate the National Model licensing bill.

On December 11th, I stated that eighteen states were licensed. Today we have licensing in twenty states, two more having come into the fold since that time, plus the fact that legislation is pending in ten to fifteen additional states.

In short, approximately forty percent of the states now have hearing aid dealers licensed.

The proposed bill is, in the main, a good bill with the exception of the composition of the Board and the so called grandfather clause.

With respect to the Board, I feel that the composition of the Board in New York State should be in keeping with some eighteen to twenty other licensing laws, in that those being licensed have a Board composed of their peers and not dominated by outside interests.

As I mentioned before, in none of the twenty licensed states is the dealer outnumbered, and in many, the dealers and fitters of hearing aids are the only members on the Board.

Secondly, I feel that the so called grandfather clause in this bill should be spelled out more clearly, and I cite as a precedent for this, the Ophthalmic Dispensing Bill passed some twney years ago in New York State.

It is my personal opinion that these two points could be worked out satisfactorily by discussions between the Temporary State Commission and the hearing aid dealers. I repeat, this is only a personal opinion but I believe it is worth exploring.

When I looked over the roster or speakers at this hearing today, I must admit that I was a little confused. The majority of speakers are audiologists. Therefore, I must ask the question: Is this a bill to license hearing aid dealers and fitters or to license audiologists?

In the Rochester hearings it was testified that the audiologists were formulating their own bill for possible introduction.

It was suggested by two speakers at this hearing that it should be mandatory for the hard-of-hearing person to see an otolaryngologist, who in turn must refer him to an audiologist for an evaluation before the hearing aid dealer can ift him for a hearing aid.

I respectfully submit that this procedure, well intentioned as it might have been, would work an undue hardship on the hard-or-hearing public, which this Committee, the Temporary State Commission to Study the Problems of the Deaf, is endeavoring to help.

In my thirty-six years in the field of fitting and supplying hearing aids I have rarely known of a person obtaining a hearing aid as a "first resort."

We are providing a commodity that no one really wants -- a hearing aid. A person does not rush out to purchase a hearing aid when he first dicovers his hearing is failing, as he would glasses when he starts having trouble with the fine print in a telephone directory.

It is a known fact that when a person starts losing his hearing he consults his physician who usually refers him to an otolarygologist.

Only, and only after the otolaryngologist has told him that his hearing loss cannot be corrected medically or surgically, does he consider a hearing aid. Frequently, even then, he usually wants the opinion of more than one otolaryngologist before he believes that his is not a medically correctable hearing loss, and is then willing to consult a hearing aid dealer.

To be completely factual, there simply are not enough otolaryngologists and audiologists to see all the hard-of-hearing.

In testifying before the Sub-Committee on Consumer Interests of the Elderly of the Special Committee on Aging, United States Senate, July 19, 1968, Dr. Aram Glorig, Chairman, Committee on Hearing Conservation of the American Academy of Ophthalmology and Otolaryngology, stated:

"It would be nice if all hearing - impaired people could be seen by the otolaryngologist."

Later Dr. Glorig added, "Even if it were good and if legislated that it should be done it would be impossible to accomplish. Some three thousand five hundred otolaryngologists cannot possibly see everyone of these people to do the kind of job that we think should be done. The California Medical Association said it would not support a bill that says that a doctor must see all patients because they know it is impossible to do so. In any case, we can't make a patient go to a doctor if he doesn't want to."

Dr. Glorig further stated in his testimony that in 1968, "There were approximately one thousand audiologists in the United States available for testing."

Mr. Kenneth Johnson, Executive Secretary of the American Speech and Hearing Association, stated at the same hearing:

"By 1970 I think the estimate is still reasonable that we could expect perhaps two thousand of these people to be available. It is very true that a number of them I included are in administrative services so you are entirely accurate there. Many of them are also directors of programs and thus provide only partial services during the day."

Let us therefore assume, for discussion, that Mr. Johnson's estimates for 1970 were realized and that in the entire fifty-one states there were two thousand audiologists in 1970, there still would be such a vast shortage that many hard-of-hearing would die of old age before their number came up for a hearing test, to enable them to be permitted to purchase a hearing aid.

Up until two years ago when it was necessary for every Medicaid recipient of a hearing aid in New York City to go to an audiology center for an evaluation, the waiting period for the first test -- and I repeat, the first test -- not necessarily when he would get a hearing aid, ranged from one to eighteen months.

Now, this was for Medicaid recipients, a small portion of the entire hard-of-hearing population, yet there was up to eighteen months waiting time.

Therefore, I believe it is logical to assume that if it was mandated by law that every person obtaining a hearing aid had to go through an audiology clinic, the minimum waiting time would probably be at least five years and more probably ten to twelve years.

Again, may I state that I am personally in favor of a fair licensing bill, as it constantly improves the competence and knowledge of the hearing aid dealer.

Similarly, I would be in favor of a licensing bill for audiologists and speech therapists as it would help to clarify their role and designate those with full competency in their field.

With respect to having an audiologist on the Board of the hearing aid dealers and fitters, I think this would be bery helpful for the exchange of ideas, and I also believe that it would be important for the audiologists to have the same number of hearing aid dealers on the

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Audiologists' Licensing Board, as there are audiologists on the Hearing Aid Dealers' Board.

The hearing aid dealers on the Audiologists' Board should be certified by the National Hearing Aid Society, which is a certification by their peers.

Similarly, audiologists on the Hearing Aid Dealers' Board should have certification by the American Speech and Hearing Association, which is certification by their peers.

In conclusion, I would suggest that the hearing aid dealers and the audiologists bury the hatchet, but not in each other. They should work together constructively to provide the maximum benefits to the hard-of-hearing public of all ages.

Thank you, Mr. Chairman.

THE CHAIRMAN: Are there any questions from members of the Commission Staff?

(No response.)

There are no questions and thank you for testifying.

Another member of the Commission has joined us, Senator Present to my right.

Mrs. Lovenbrook will be our next speaker.

May I request that those testifying give their name, address, and association or firm associated with, if any, for purposes of the record.

MRS. LOVENBROOK: My name is Angela Lovenbrook. I am a coordinator of the speech and hearing department, Rockland County Center for Physically Handicapped.

The Center where I work is the only Center in Rockland County which is certified by the State to do Medicaid hearing and hearing aid evaluations.

What that means is that any patient in Rockland County, who has been seen by an otolaryngologist, and has a hearing loss must first come to the Center where I work to be tested before a hearing aid is purchased by the State for that individual.

I should like to state that in Rockland County there is no waiting list of persons waiting to be evaluated to obtain an aid, and there is nothing like the five year wait to eighteen month wait. There simply is no waiting list.

As soon as a referral is received the person is scheduled. The wait is no more than two months before the testing has been completed and before the hearing aid has been delivered to the individual.

As far as this licensing bill concerned, I felt that it was a good bill and a good beginning to insure that the hard-of-hearing population has qualified people to which it can go when a hearing aid is desired.

There are areas where I felt the bill should go further.

For example, one area that I question a great deal is the testing of individuals for the fitting of hearing aids in their home, with a portable audiometer.

I think it is fairly well established in the research that you simply cannot do adequate testing, particularly when things such as masking are required, or when you want to do speech discrimination or speech threshold testing.

You simply cannot do them outside of a soundproof booth. In my work, I see many, many people who have first been to a hearing aid dealer, have been fitted with an aid.

Many, many people who have four hundred dollar hearing aids, which sit in drawers, because they were fitted improperly. I think that is an area that the Commission should certainly look into.

Another thing is that there are types of advertising of hearing aids which I feel are misleading.

For example. I saw a patient the other day who was seen by an otolaryngologist, and who was told that she should go to a clinic for evaluation. She said when she got home she saw an advertisement for the all-in-the-ear hearing aid.

I know, and I think that most audiologists know that there are very few people in the hard-of-hearing population who can actually benefit from one of those aids, but it is very attractive because it's tiny and it can be concealed.

I think that when a dealer advertises in the paper that he has an all-in-the-ear hearing aid, people think that they can wear it.

What actually happened with this lady, of course, who couldn't wear that aid. She wore it for a little while, saw it was unsatisfactory and ended up buying a four hundred twenty dolloar behind the ear aid which then sat in the drawer.

I think it should be required that it be made very clear that there are very few people who can wear that kind of aid.

Mr. Morris showed me in a catalog where you can purchase a hearing aid and a do-it-yourself kit to make an ear mold, which is a dangerous think to do.

If you have any kind of an external condition of your ear, or wax blocking, and you have not been seen by a doctor, and you put an impression material in your ear, you can damage yourself.

I think those are the kind of things the Commission might look into, in addition to those thing covered in the bill.

There is also advertisement indicating that you can win a hearing aid. I don't think that the public is necessarily educated about, or should be educated about all of the different factors involved here. I think that somebody, who knows better, should do something about it.

I don't think that kind of advertising should be allowed.

One thing that I was pleased with in the Bill is the mechanism that it sets up where people who have complaints can take their complaints. At the present time, although there is a New York State Hearing Aid Dealers' Association, I don't think it is required that all hearing aid dealers belong to this.

They sign a statement of ethics, but I don't think it is required that they sign. Therefore if I have a complaint about a dealer who doesn't belong to that association there is no place for me to take that complaint; so I was pleased with that mechanism.

That's all I have to say.

THE CHAIRMAN: Thank you, Mrs. Lovenbrook. May I ask you this question: Do you feel that although you don't have a problem in Rockland county with patients -- as I understand your testimony, they are dispensed with rather quickly so there is no waiting period -- do you feel that this is the situation in the entire State of New York, or is this peculiar to Rockland County?

MRS. LOVENBROOK: I think that's probably not the situation all over the State, and I think it would be indeed a hardship if it were required if every patient must come to an audiology clinic, before a hearing aid is fitted. I think I have to make a distinction between Medicaid patients for whom the State pays and private payment individuals.

I feel that it should be uniform throughout this State that Medicaid patients should be seen by somebody other than an otolaryngologist and a hearing aid dealer. Before it was made mandatory in Rockland County that individuals be seen first at a clinic, Dr. Waldrin, who is the Commissioner of Health in Rockland County, has told me that the expenditure for Medicaid hearing aids were almost double what it is now.

I think that that was because routinely a Medicaid patient was sent from an otolaryngologist to a dealer, and almost routinely an individual was recommended a hearing aid, and most often two aids were recommended. There are many cases where I see an individual and find that a hearing aid just is not going to be the answer to his problem, and there are very few times when I have to recommend two aids.

In most cases one aid is certainly sufficient, but it seemed like it was just routine. I see this all the time when I see patients. They will say, "I just came from a dealer and he said I absolutely have to have two hearing aids, one won't work." In most cases that is not true.

I think it would be a hardship for a lot of people outside of maybe the Metropolitan area for that to be required -- that they go to an audiology clinic. I think that the State, if the State is going to pay money for all of these hearing aids should have to be a little more certain that the hearing aid is indeed necessary before it is paid for.

THE CHAIRMAN: Can you give the Commission some idea as to how many recognized audiologists we have in the State of New York?

MRS. LOVENBROOK: I don't know that.

THE CHAIRMAN: You don't know that?

MRS. LOVENBROOK: No.

THE CHAIRMAN: Do you have any idea how many audiologists you might have in Rockland County?

MRS. LOVENBROOK: There are no more than four certified audiologists in Rockland County, certified by the American Speech and Hearing Association.

THE CHAIRMAN: This is commonly referred to as ASHA?

MRS. LOVENBROOK: That's right.

THE CHAIRMAN: The audiologists are not licensed in the State of New York?

MRS. LOVENBROOK: That's right. But there is a bill pending.

MR. BENOWITZ: This question is related to certification.

You said there are four. Out of those four how many are certified by the State?

MRS. LOVENBROOK: I don't think the State certifies audiologists.

MR. BENOWITZ: They do.

MRS. LOVENBROOK: They do not.

MR. BENOWITZ: They do.

MRS. LOVENBROOK: I know what you are referring to. There is a difference between ASHA's certification and New York State certification.

For example, I had New York State certification before I had completed the requirements for ASHA certification.

You are correct, though, the State does require a certain amount of certification.

THE CHAIRMAN: But they do not license?

MRS. LOVENBROOK: Correct.

THE CHAIRMAN: I wanted to follow through with the thought that I had in mind.

Audiologists, like yourself, and you have four to the best of your knowledge in Rockland County, do they primarily work for agencies like the Board of Education, or Department of Health of hospitals, or something like that, or are they independent persons in business for themselves dealing directly with the public, and those that have hard-of-hearing problems?

MRS. LOVENBROOK: Most audiologists, all of them in Rockland County, are individuals who work in connection with some agency. There is one audiologist at the New York State Rehabilitation Hospital in Haverstraw.

In Rockland County at least they are all affiliated with another institution and are not privately employed.

THE CHAIRMAN: They are not private entrepreneurs in the business for themselves?

MRS. LOVENBROOK: No. I would think there are very few audiologists who are in business for themselves.

THE CHAIRMAN: If there were a requirement that anyone wishing to buy a hearing aid first see an audiologist, this might present somewhat of a serious problem to find one that is per se in business.

MRS. LOVENBROOK: Who is in a private business?

THE CHAIRMAN: Yes.

MRS. LOVENBROOK: I would think that most of the time he would have to go to a hospital or a clinic where there is a speech and hearing department.

THE CHAIRMAN: I have no further questions.

Are there any questions of the Board?

MR. BENOWITZ: I have been having a hard time finding the definition of an audiologist.

MRS. LOVENBROOK: As compared to what?

MR. BENOWITZ: The function of an audiologist.

MRS. LOVENBROOK: I consider the function of an audiologist to provide differential diagnosis where there are problems with hearing and also to provide auditory training, speech reading, to children and all who are in need of those services.

Now, when I say differential diagnosis, I mean all of the different kinds of testing that are possible in the field; live voice testing, and as part of that it is sometimes a requirement that you fit a hearing aid, or at least that you determine the need for one and determine whether or not the patient can actually benefit from the aid.

MR. BENOWITZ: What do you mean by,

"live voice" when it comes to evaluating hearing?

MRS. LOVENBROOK: That is as opposed to a tape recording. There are tapes available which have speech audiometric --speech discriminations lists, lists of works that have been taped for use in testing for hearing aids, or to determine what the person's speech discrimination ability is.

Live voice would be opposed to the use of a tape or a record. I would actually talk into the microphone of an audiometer and monitor my voice on a meter. That kind of testing, if it is done, can't be done in a home, for example. It must be done in a room which is sound treated, at least.

THE CHAIRMAN: An especially designed studio for that purpose?

MRS. LOVENBROOK: Yes.

MR. BENOWITZ: This live voice, could it be done without a microphone?

MRS. LOVENBROOK: Not very objectively, no.

MR. BENOWITZ: What is the difference. You have a microphone in the hearing aid and then you have another microphone, so you are not testing directly, but indirectly.

MRS. LOVENBROOK: If I were to test you by live voice -- in other words, say a list of words to you -- that's not the same as using an audiometer where I can control the intensity of my voice on the audiometer, and I can control the volume of my voice and make sure it is uniform through the audiometer.

In other words, I can be much more certain with an audiometer at which level I am presenting the words than I can be just sitting here and presenting them to you.

MR. DEMPSEY: I believe you testified that you do come into contact regularly with hearing aid dealers?

MRS. LOVENBROOK: Yes, I do.

MR. DEMPSEY: Can you have us your opinion on the competence and the qualification of the hearing aid dealers whom you do come in contact with?

MRS. LOVENBROOK: There are two or three dealers out of those whom I see regularly with whom I have an excellent relationship, whose competence I have every confidence in. The other dealers with whom I have come in contact are dealers that I have difficulties with, because I have felt that the practices that they have engaged in are, according to my standards, unethical.

They have told patients things which are not true. They have attempted to finagle with prices of aids.

I have seen patients, after they've fitted them, and found that they made erroneous fittings. They caused a good deal of heardship to some people in the county.

MR. DEMPSEY: Can you draw any distinction between a certificate-approved or a State-certified dealer and one who is not; or is there any correlation between the dealers you just mentioned and whether they are State-certified, or State-approved?

MRS. LOVENBROOK: One of the dealers with whom I have a good relationship is fairly close to having a masters degree in audiology and he belongs to this -- I am not saying the name of it correctly -- it is an association of hearing aid dealers in the State. They sign a statement of ethics, and he belongs to that.

In fact, the three dealers with whom I have good relationship belong to that, and are actively involved in that.

One of the dealers with whom I have difficulty does not belong to that, and therefore, there is no place I can go when I have a complaint about this dealer. The only thing that is left open to me in my position is to write a letter to the State.

I think it is the Department of Health that certifies dealers.

In other words, there is a list that I get of dealers who are certified by the State. I guess I can write to them and say the person has done thus and such, but it is difficult, because there is no mechanism set up to which I can go and say "this is what he did and this is what he did to my patient, and I don't feel he should be on this list."

MR. DEMPSEY: Are all three of the dealers with whom you said you have a good relationship on that Department of Health list?

MRS. LOVENBROOK: All the dealers who

assign aids to me in the clinic and who allow me to use their hearing aids for testing purposes, must be on that State list, otherwise, I can't recommend an aid for which the State will pay.

THE CHAIRMAN: Just one other question in that same line of thought.

You feel that a licensing bill would help you, as well as those who perhaps are being mistreated or misfitted, and that it would give them someplace to go for their complaints?

MRS. LOVENBROOK: Yes.

THE CHAIRMAN: Thank you, and are there any other questions?

(No reponse.)

THE CHAIRMAN: On behalf of the Commission I want to thank you for taking your time in coming here to testify.

Dr. Sheldon will be our next speaker.

DR. SHELDON: My name is Neil Sheldon. I am Director of the Speech and Hearing Center for Monterfiore Hospital.

I am also President of an organization formed in February of 1968. It is called Directors of Hospital Base Speech Pathology and Audiology Services.

It has on its membership roles the directors of approximately forty or forty-five speech and hearing centers based in hospitals in the five boroughs of New York City.

I would like to say that I am very much in favor of a bill to license hearing aid dealers.

However, in reading this bill, I was impressed by some, I think, significant gaps, and I would like to point them out.

First of all, with reference to the description of the Board for licensure, it calls for two otolaryngologists.

THE CHAIRMAN: If you wish to point directly to the page and line number of the bill, I think it would help those members of the Commission to follow you in your recommendations.

If there is anybody in the audience that wishes a copy of the bill we do have copies available, if you wish to follow any of this.

DR. SHELDON: Page 4 of the bill, the paragraph that begins on line 6, refers to the constituency of the licensing board. It calls for two otolaryngologists, but it makes no reference to the credentials of the otolaryngologists.

I think they should be Board-certified otolaryngologists.

Similarly, and I think this is an even more serious gap, it refers to audiologists, but does not define what this animal is. I would like to plea for a specification that these audiologists be certified for clinical competence in audiology by the American Speech and Hearing Association, and I would like to request that these qualifications for Board membership be spelled out repeatedly throughout the bill.

I have no specific reference in the bill to lead you to, because I don't find it in the bill, but to me implicit in the bill is the danger that certain medical conditions commonly associated with hearing losses can be overlooked. Conditions such as draining ears, surgically correctable hearing losses, and eighth nerve tumors may be overlooked.

The otolaryngologist relies to a considerable extent on the detailed and very expert creation of the audiogram, and I submit that there is a level of expertise contained in the training of and ASHA certified audiologist which the patient needs.

Section T of the bill, page 9, forbids the licensee to fit or otherwise adapt a hearing aid for the use of any minor person under the age of sixteen, without written prescription from a duly licensed physician of the State of New York. I want to ask why this protection is extended only to persons under sixteen.

I particularly have in mind a very considerable population of hearing impaired individuals, the geriatric population, and they are a very vunerable group. I feel they deserve the same medical attention that individuals under sixteen require.

I am also disturbed by the phrase, "duly licensed physician." I feel that pathologies connected with the ear require the services of a Board qualified or a Board certified otolaryngologist.

I don't have the specific reference here for you, but the phrase "practice of fitting and dealing in hearing aids" means the measurement of human hearing by means of an audiometer or by any means solely for the purpose of making selections, adaptations, or sale of hearing aids.

MR. DEMPSEY: Page 2.

DR. SHELDON: Paragraph 6, line 25.

Or the making of audiograms for the professional's use in consultation with the hard-of-hearing.

I submit that the quantification and human prescription of common hearing losses is a common procedure. As I said before, it requires undergraduate training and training on the graduate level, ultimately leading to a masters and bachelors degree.

I think the Commission should have a copy of the requirements for certification and clinical competence by the American Speech and Hearing Association in Audiology, so it is fully informed on what the course of training consists of.

One of the rules for the maintenance of clinical competence with ASHA is that the holder cannot function in the employ of a vendor of a specific brand of hearing aid. So, if this bill is accepted as it is currently written, you are faced with a situation where an individual will either go to an agency and receive possibly a less expert hearing test, or he will have to receive it from someone who is not certified according to the ASHA rules. I think that the patient loses.

I am aware that the problem and situation which led to the writing of this bill is that there has been such a shortage, such a constriction in services available to the patient. I want to assure you that members of our profession are very concerned about this and are working very fast and very hard to alleviate the problem.

As an example, I can tell you that at Montefiore Hospital there is now a two week wait for a hearing aid evaluation. I know at on time it was much longer, but I think that by working with individuals in hearing centers and hospitals we can help route patients and cut down on some of these waiting lists.

I don't want the Commission to feel that we are functioning in some kind of an ivory tower where we are not aware that there have been these problems, or that we are not trying to do something about these problems.

I think they are very real problems. If an individual cannot get very good service he is going to get some other kind of service. We want to see if we can help get good services to patients faster, and I think we are making some headway in this respect.

The key problem to me in this bill is that the responsibility for the diagnosis and measurement, and the description of the hearing loss, which leads to the selection of an appropriate aid, and the sale of that aid, all repose with one agency. I find this a very dangerous kind of situation.

Perhaps I am not as sophisticated as I should be in the area of other types of fittings of prosthesis, but I am not aware of any other medical area where this precedent exists, where the individual who sells the prosthesis also does the diagnosis that leads to its selection, and I ask you to consider this.

I personally believe that a qualified audiologist in the employ of a hearing center who has accessibility to many makes of hearing aids, and a commitment to none, in terms of its sale, is in the best position to suggest to the patient which aid would be most beneficial to him.

I would just close by saying that I believe that this bill submits patients to less highly skilled audiological prosthesis, and also submits them to audiological services to be rendered by individuals who have a product to sell. I believe that the two components of this process of fitting a hearing aid, that is the diagnosis and selection, and then the actual fitting, should be in two separate hands.

Thank you.

THE CHAIRMAN: Thank you, doctor.

Just one question. With reference to your last comments, is that not really the case right now in the business of sale of hearing aids, that the patient does not have to submit to any tests or any examination?

DR. SHELDON: You mean with regard to the Medicaid and all, yes.

THE CHAIRMAN: So really this bill doesn't cause anything less to happen to the patient in submitting to test examinations?

DR. SHELDON: I think it makes a bad situation a little worse. It kind of authenticates it, where I would perhaps like to see it reversed. The lady before me spoke about the payments that the State has been making for hearing aids that are not being used by people, so I think we have an already unhappy situation from the State's standpoint, and from the patient's standpoint.

I think this bill will tend to enlarge this.

THE CHAIRMAN: You don't believe by a licensure act we would have some control in the State to try to control exactly what you are saying might happen or is happening?

DR. SHELDON: I think a good State licensure bill will.

THE CHAIRMAN: But this one doesn't?

DR. SHELDON: Not with the ones that occur in this bill.

MR. STRAIL: Would that bill upgrade the hearing aid dealers?

DR. SHELDON: You mean a good bill?

MR. STRAIL: Yes, a good bill.

DR. SHELDON: I wonder if you could define for me that you mean by upgrade? Do you mean enhance their professional image or help them financially?

MR. STRAIL: To upgrade their line in selling proper hearing aids to the public, giving proper tests, and not by not selling through mail order houses.

DR. SHELDON: Yes, I think a good bill will upgrade the status of the dealers. I think it would be good for business, and I think it would be awfully good for the patients.

THE CHAIRMAN: Are there any other questions?

MR. BENOWITZ: You said a "good bill." I believe his question referred to this bill.

DR. SHELDON: This bill is -- is your question with regard to this bill?

MR. STRAIL: Yes.

DR. SHELDON: No, I don't think it will. I think it is going to lead to more difficulties.

ASSEMBLYMAN GRIECO: Doctor, don't you feel that in the qualifications of the Board members that are recommended in this bill, if the recommendations of their qualifications were carried out to meet with the requirements of the medical profession, that you referred to, something about the American Speech --

DR. SHELDON: American Speech and Hearing Association.

ASSEMBLYMAN GRIECO: Don't you feel that possibly if those members who would be considered to be on this Board would help us in recommending this legislation under this bill for the licensing of the hearing aid dealers?

DR. SHELDON: I think that the improvement of the Board qualifications would be a help, yes. That's an important key, but after all, the people who sit on the Board are not the ones who are going to see the patients. I feel that another very important consideration is that the individual who is best trained, who is most highly trained, and who has an economic disinterest in the fitting of the aid and in the selection of the aid, should be the one to perform the initial diagnosis.

Now, this is a system that many hearing centers have functioned with. We have. We've had very good relations with a number of hearing aid dealers. This has worked out, I think, to the satisfaction of ourselves as professionals, to the patients, and I think to the satisfaction of the dealers.

It presents difficulties in logistics, because, yes, there are not enough hearing centers, and patients do back up; but as I say, we are working on this and I think the situation is improving tremendously.

ASSEMBLYMAN GRIECO: You heard the previous doctor who testified?

DR. SHELDON: I'm sorry, I didn't.

ASSEMBLYMAN GRIECO: I understand that there is licensing of this group of hearing aid dealers, or those who sell hearing aids, in twenty states: I am assuming that from your experiences, doctor, has there been some information which it has come to your attention that a recommendation of a licensing for the hearing aid dealers should prevail in the State of New York.

Of course, it is a pretty far fetched question, but would you have any knowledge to that effect?

DR. SHELDON: I am not sure of your question.

sir. Are you asking me if I felt from things --

ASSEMBLYMAN GRIECO: Do you have any knowledge or information from any other states -- I don't know which are the twenty states -- that has come to your attention where such a condition of licensure is contrary to the best interests of those who require these hearing aids, which has been to the extent where we do require a licensing of a hearing aid and those who sell hearing aids in the State of New York?

Do you have any such knowledge?

DR. SHELDON: I have no knowledge that licensure in terms of other states has been either good or bad for the patient, if that is your question.

THE CHAIRMAN: I have one other question.

I noticed before your name appears the abbreviation for doctor.

DR. SHELDON: I am not a medical doctor. I am a PhD in Speech Pathology.

THE CHAIRMAN: Can you give us some idea how many otolaryngologists and audiologists there are in the State of New York?

DR. SHELDON: No, but I can refer you to

the New York State Speech and Hearing Association, which should be able to tell you how many individuals there are on their membership roles either trained as audiologists, or certified as audiologists by the American Speech and Hearing Association. The American Speech and Hearing Association in Washington can also tell you this.

ASSEMBLYMAN LEVY: Do you practice privately?

DR. SHELDON: No, I do not.

ASSEMBLYMAN LEVY: Do you think a licensing bill along these lines would tend to curb some of the abuses in this area?

DR. SHELDON: A better bill might, yes. I think that this bill as it currently stands is very amenable to abuses.

ASSEMBLYMAN LEVY: Do you think the State has been abused in this area as to its Medicaid patients, as far as hearing aids are concerned?

DR. SHELDON: I have no statistics, and I will give you a subjective answer. Yes, that is my subjective impression.

THE CHAIRMAN: Thank you, doctor. The Commission wants to thank you for your time.

Mr. James Ryan will be our next speaker.

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MR. RYAN: My name is James Ryan and I am here representing Lifetone.

Mr. Newman is a President of Lifetone, and he is also present.

Lifetone is a hearing aid dealer having twelve retail outlets, nine of which are in the E. J. Korvette Department Stores.

I am an attorney with offices at 10 East 40th Street in New York City.

I have prepared a written statement, which I have distributed to you, but in one or two instances I would like to disgress from the prepared comments in view of some of the earlier comments and questions by the Commission.

In reviewing Mr. Cerosky's bill, and in listening to the Commission's questions at the recent Rochester Hearings, it appears that there are two problems of particular concern, namely:

1. The control and regulation of fraudulent and deceptive practices by hearing aid dealers; and

2. The elimination of transient dealers who are ill-equipped to adequately provide aids to the public.

The Lifetone dealers are in sympathy and agreement with the aims of the Commission in controlling abuses that may arise, but would like to suggest an alternative approach, which in our opinion would be administratively less cumbersome, and would obviate some of the problems inherent in subjecting hearing aid dealers, who are, in actuality sales personnel, to the admission and practice standards of professional groups.

The industry itself refers to dealers as salesmen, and an industry-used training manual advises aspirants that success requires "the development of highly specialized sales techniques".

But, even despite these references our own empirical knowledge reveals that hearing aid dealers are selling a product. There is no professional service involved, and in fact today with the introduction of simplified electronic testing equipment, the hearing aid dealers's role is becoming even less complex.

It should be clear that the service of the dealer, as is true with all sales personnel, is only peripheral to the sale and is not a determining factor in the success the wearer will have with the instrument.

In fact, at the time of the purchase the wearer is fully able to evaluate the instrument, by determining the hearing improvement, if any, which is derived through its use.

Therefore, the establishment of a Board of Examiners under the "professions" article of the Education Law seems incongruous.

The concept of a peer board to review the admission and practice of professions was undertaken as a matter of necessity. In the true professions such as medicine, dentistry, law, etcetera, there is no group other than the practitioners themselves capable of evaluating the quality of services rendered by other members of the group.

This is not true of hearing aid dealers, as the existence of two otolaryngologists and three audiologists on the proposed nine member Board demonstrates.

It is our contention that, since hearing aid dealers are selling a product, existing and proposed consumer protection procedures are more desirable alternatives than peer review.

In his 1970 message to the legislature, Governor Rockefeller stated that a major factor in preserving an honest marketplace which protects and benefits both the consumer and the responsible businessman has been the Attorney General's crusade carried out through the Law Department's Bureau of Consumer Frauds and Protection.

I would like to add at this point to the earlier comments that there is no alternative if a person is not a subscriber to the hearing aid dealers code of ethics. It is simply not true.

This program is carried out under the legislative authority contained in Executive Law Section 63, subdivision 12, and General Business Law Sections 350 through 350-d.

The relevant sections of the Executive Law require that the Attorney General shall:

"Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carryingon, conducting or transaction of business, the Attorney General may apply, in the name of the people of

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the State of New York, to the Supreme Court of the State of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of Section 440 of the former penal law, or Section 130 of the General Business Law, and the Court may award the relief applied for or so much thereof as it may deem proper."

I would like to add that Section 130 of the General Business Law provides for a certificate of doing business which is required for them to file.

"The word "fraud" or "fraudulent" as used herein shall include any device, scheme, or artifice to defraud and any deception, misrepresentation, or concealment, supression, false pretense, false promise or unconscionable contractual provisions."

"In connection with any such proposed application, the Attorney General is authorized to take proof and make a determination of the relevant acts and to issue subpoenas in accordance with the Civil Practice Law and Rules."

The authorization for the Attorney General's action against false advertising in the General Business Law reads in part:

"Section 350. False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this State is hereby declared unlawful."

"Section 350-a. The term "flase advertising" means advertising, including labeling, which is misleading in a material respect; and in determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."

"Section 350-b. Any person, firm corporation or association, or agent, or employee thereof who engages in any of the acts or practices stated in this article to be unlawful shall be liable to a civil penalty of not more than five hundred dollars for each violation, which shall accrue to the State of New York and may be recovered in a civil action brought by the Attorney General."

"In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trades Commission, or any official department, division, commission or agency of the State of New York."

The hearing aid code of ethics, which is subscribed to by the dealers merely makes these provisions applicable to the hearing aid dealers, and makes them apply to the sale of hearing aids.

Even without the hearing aid dealers code of ethics, the Attorney General still has the authority to come in and enjoin certain acts or to initiate the civil penalties against people who commit fraudulent advertising as they do in any other business in the State of New York.

While these provisions of the Executive Law, and General Business Law are quite comprehensive, Governor Rockefeller advocated even more sweeping procedures to protect consumers. In his message to the legislature the Governor said:

"Though we have achieved a high level of consumer protection in this State, I believe we can be more effective by having the numerous consumer programs of our State agencies more closely coordinated."

"I will therefore establish a State Consumer Protection Board in the Executive Department, comprised of the heads of all State agencies having a primary role in protecting the consumer or providing consumer educational services. An advisory group will insure broad consumer representation."

"This Board will supplement but not duplicate the existing consumer protection activities of the Attorney General."

"Matters requiring legal proceedings will continue to be referred to the Attorney General's office, which has the staff, experience, and expertise in this field. In this connection, I urge your approval at this Session of the Attorney General's proposed legislation to give him added powers to protect the consumer. These would include:

A. The right to obtain restitution for consumers for losses they have suffered;

B. The power to initiate "class actions"; so that the Attorney General can act for all consumers victimized by the same fraud;

C. Expansion of the Attorney General's power to obtain injunctions against all deceptive and fraudulent practices affecting consumers; and,

D. Operation of mobile consumer protection units to extend the services of the Law Department's Bureau of Consumer Frauds and Protection throughout the State."

Thus, the establishment of a Board of hearing aid dealers to regulate themselves would only obfuscate and complicate already comprehensive and effective consumer protection procedures.

Additionally, it has been our experience that Boards, once constituted, are more responsive to the desires of the professions than the needs of the public. A review of the rules of the various Boards, as contained in the Department of Education's Bulletin, will reveal a surprising number of regulations to limit and restrict legitimate advertising processes, which non-regulated occupations use to stimulate competition and thus insure a free competitive market for the consuming public.

The second problem, that of controlling transient dealers, does not appear to be of major proportions, but this does not necessarily negate the need for licensing.

However, rather than create licensing requirements more suited to the professions, we propose that the Department of State which now has the responsibility for licensing barbers, cosmetologists, and a host of other non-professional occupations, be similarly authorized to license hearing aid dealers.

This approach would insure the establishment of a minimum standards, while avoiding the risk of discouraging potential hearing aid salesmen from entering the field due to difficult examinations

Parenthetically, I would like to add that this very problem exists with opticians in this State. It is not uncommon that only ten percent

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to twenty percent of the applicants are successful on the exam due primarily to the inclusion of theoretical physics and mathematical questions.

We propose that the examination be restricted to the testing of the applicants' practical ability to conduct hearing tests and to fit the aid. Inclusion of theoretical questions in physics and other similar academic areas unquestionably discriminates against the educationally disadvantaged, who in today's society are all too often from the economically lower strata, including most blacks and Puerto Ricans.

While the Federal, State and local governments grapple with the problem of the unemployed and under-employed, they continue to enact licensing and entrance requirements far beyond the needs of the occupation, thus effectively curtailing the hiring of under educated minority employees.

For the foregoing reasons, we propose that a simplified version of the bill before us be introduced that would accomplish the laudable Aims of this Commission without necessarily restricting the activity of the overwhelming majority of hearing aid dealers who are honest, sincere and competent, and without inadvertently discriminating against the under educated, but extremely capable members of society.

Thanks for this opportunity to appear and express our views.

THE CHAIRMAN: Any questions?

MR. MORRIS: Mr. Ryan, you stated, or made reference to the test for optometrists, opticians, and indicated that only ten to twenty percent passed the first examination.

We have some statistics here from the State of Oregon, regarding the enactment of its law. Of the first 172 candidates to take the qualifying examination, approximately twenty-five percent failed and at least two extremely dangerous errors were made by dealer candidates. They were failure to use the audiometer tone interrupter, and the lack of awareness for the need of medical referral.

Do you think that it is possible that this situation might exist presently in New York State, and that might be a more relevant frame of reference than the testimony you have given?

MR. RYAN: Do I think it is more relevant than the testimony I just gave? I think obviously not, but certainly I think that any time we are dealing with people who are not medically trained, and the hearing aid dealer is not, that there is a problem when somebody who happens to be a physician is looking at what this person does and that they would feel that something else should be done.

I think unquestionably if we refer people to hearing aid dealers and we do refer them to optometrists and to opticians -- and people go to druggists for other prosthetic devices -- that certainly we have people who are of a less educated level that they would do things different from what the physician would do.

In my comments I think I did mention that licensing is desirable, and that the licensing should be restricted to determining the person's ability to conduct examinations and to fit the hearing aid. If I can gather from what you are saying that you would think it's a more desirable procedure to have people referred to hearing aid dealers only from medical doctors, or audiologists, I don't think we would have any objection to that.

If the problem does exist that people's

health is being hazarded by going to hearing aid dealers without prior references, we would take no exception to that.

I think this bill is a step in the other direction. What we are doing is raising hearing aid dealers to a level which is incompatible to their actual functions. I think we are trying to license them under the professions act of the Education Law.

I don't think that that is where hearing aid dealers belong.

MR. MORRIS: What I was referring to is the fact that these dangerous and obviously dangerous errors that were made by applicants in the State of Oregon would indicate to me that perhaps there was a need to make sure that every person in the State of New York who dispenses or sells hearing aids has a rudimentary knowledge of the things contained in this licensing bill, in order to protect the public. Would you say that's a fair statement?

MR. RYAN: Looking at what the bill would have on the examination, I would say that I think the licensing requirements in the bill go too far.

I don't see that the knowledge of the physics of sound has very much relevance to the ability to fit a hearing aid. I don't think that it would overcome the problem of improper fitting of the hearing aid, or improper referral to a medical doctor, or lack of referral.

SISTER NORA: I think, in the same vein, your statement on the first page here, I take strong exception to, because you are saying that there is no professional service involved, and that with the simplified electronic testing equipment that is being developed, hearing aid dealers are always becoming even less complex. You are stressing the fact that is a sales person and that his role has nothing to do with the success that the wearer is going to have with the aid and with the instrument, and that the person himself who is getting the aid is determining the improvement and so on. But the person who is hard-of-hearing, or even with a more severe loss than say a hard-of-hearing person, then certainly one who is fitting him with an aid is doing much more than selling him an instrument. There is much more involved there than just him giving a person an instrument.

He has got to be able to evaluate and know what type of aid is going to benefit this particular person, and I take strong exception to that particular section.

MR. RYAN: My name is Ryan and there is a story about Jimmy Walker who was asked a question and the question was "Why do Irishmen always answer a question with a question?" and he said "Do they?"

If I could just ask a question in return to your question, I am not sure that I see anythink in the existing bill that contradicts anythink there, or changes anything. I really, and from my limited experience with it think that the electronic testing equipment has made things less complex for the dealer, but be that as it may, is there anything in this bill which negates my position on what the licensing regulation should be for hearing aid dealers?

I think there are a number of problems. I think as the gentleman pointed out that the lack of referral in certain instances may be a problem. Certainly dealers may have a tendency to oversell.

I don't think it is just the hearing aid dealers.

I am sure any place where the person makes his livelihood on selling a product, and what I am trying to demonstrate is that they are selling a product, they are not charging for a professional service.

You go into a hearing aid dealer and he makes a sale. You buy a hearing aid for one hundred eighty dollars or two hundred dollars, or five hundred dollars and he makes a profit on the sale he made, not on the services, like the otolaryngologist, and the audiologist.

What we are trying to do is set up services for the hearing aid person. You don't come in and buy it like you would buy a box of candy.

We are dealing primarily with somebody who is selling a product and I don't see that my comments in my approach to licensing and regulating hearing aid dealers in that regard is altogether different than this bill.

I don't see that this bill does anything to correct the situation that you raised which my bill does not.

SISTER NORA: You made a point about the

test procedures that are in the bill, which would demand that hearing aid dealers with knowledge in certain areas, and I think that this would --

MR. RYAN: What I am saying is that the test should be a practical application of the ability of a hearing aid dealer to fit an aid and to conduct a test.

However extensive that may be, but is should be limited to the practical application of what he is doing. I am not against testing. I was trying to point out that I also represent a group of optometrists and opticians. We found a great deal of difficulty, as I pointed out, in the percentage of people who are passing the tests, of bringing in people even though they all passed the practical part. The opticians have to pass a practical part of the test, and they have to answer questions like what they would do in this particular part of the practice.

I think this is what the hearing aid tests should be limited to and not go into the physics of sound, or other things on the test, which don't determine his ability or lack of ability to fit a proper hearing aid.

The fact that a person can take a test in physics and pass it -- I am sure I could take the examination in physics and pass it, but I can't do it in the ability of fitting a hearing aid. The person who can pass the other test may not be able to pass the practical part of it.

I think we should discourage the people we are aiming at. I think today we must admit that the people who can go to school and graduate from high school have a limited background in science and mathematics, if they graduate with a general diploma.

To enter into the hearing aid dealers' position without this background, and then test him on what we have deprived him of I think is unfair. I think we have to worry about getting people jobs and we shouldn't over-license people.

THE CHAIRMAN: Of course, passing the bar exam doesn't necessarily insure or mean you are going to be an excellent attorney either.

I would like to get something clear. Aside from the printed testimony I did hear that you did say you believe licensing is desirable.

MR. RYAN: I said that in there as well.

SENATOR PRESENT: Mr. Ryan, you come here representing Lifetone Incorporated. Do you feel that Lifetone has a special technique in the manner in which they sell their hearing aid products, different from what other dealers do?

MR. RYAN: I think perhaps Mr. Newman would be able to answer the question of the techniques that Lifetone employs vis-a-vis other dealers. He is in the room if you would like to address the question to him. I really don't know what other dealers do or what their differences are, but perhaps Mr. Newman could help us.

THE CHAIRMAN: In all fairness to those who are going to testify, if Mr. Newman is going to testify and answer these questions, I would like to see it after the others have concluded. We are running a little late on our schedule.

If Mr. Newman would like to answer those questions it can be done after the other people testify.

ASSEMBLYMAN LEVY: Mr. Ryan, do you believe that this bill, the way it is drafted presently, would protect the consumer against any shop selling prosthesis?

MR. RYAN: I think that it would create a situation less desirable in regard to the consumer protection that now exists. I think that hearing aid dealers, or any dealers protecting themselves or taking -- what we are doing -- the Education Law now requires that if there is some action taken against a dealer of some other profession which is now licensed under Section 8 of the Education Law, that it be referred to the appropriate Board. The Board conducts a hearing and then submits its recommendations to the Attorney General, and the Attorney General then comes through with the very same procedures that I have outlined under the Executive Law, or under the General Business Law.

What we are doing is merely insulating the consumer one step further away from the person who is ultimately going to take corrective action. The regulations and now the Omnibus Bill that Senator Dominick introduced last year, spells this out legislatively.

The Attorney General ultimately prosecutes all of these complaints under the sections that I pointed out, so all we are doing is putting in another layer. We are merely insulating the consumer from the Attorney General, forcing him to go through another administrative agency.

ASSEMBLYMAN LEVY: I think you are wrong as far as that goes, Mr. Ryan.

If the Governor comes forth in his proposal and it is adopted by the legislature, or as the Governor has indicated it is certainly within the purview of the Board of the Commission, or of separate bills unto themselves, you would probably see this year licensing of T V repairmen and licensing of automobile mechanics. It would at least get on the floor for debate with a chance of passing. We have to concern ourselves with the economically deprived areas and people who can be taken, you might say, and whether it is the black community, or the Puerto Rican community, or even our senior citizens, where a hearing aid might be sold for one hundred eighty dollars or five hundred eighty dollars. I question very seriously whether the salesman takes that into account when he goes out to sell a hearing aid.

If he can get five hundred eighty dollars, he gets that. Mr. Cerosky's presentation here, and this bill as presented here today, would definitely act to enforce and protect the consumer. This is what I think we are interested in, that the consumer be properly fitted and given the proper device, and also in the proper price range category. There are many technical specifics as it deals with the medical profession, and I think the consumer should have the protection there. I question very seriously the practices that take place in the State, and this is what I am concerned about.

MR. BENOWITZ: In light of this bill we have stated the requirement of knowledge for the examination, and there is nothing in there that deals with theory as you pointed out.

MR. RYAN: I think Item A.

MR. BENOWITZ: On page 12, basic physics of sound.

MR. RYAN: I think the first one is a

discussion of physics.

MR. BENOWITZ: If a salesman isn't interested in the product once he makes the sale, where does the consumer get the service he needs to make the assessment and so on?

MR. RYAN: I would like to see it more practical than theoretical.

MR. BENOWITZ: The hearing aid dealer is not just a salesman. He would be the first one to say that.

MR. RYAN: I am sure he would.

THE CHAIRMAN: If there are no further questions, thank you very much, Mr. Ryan.

Mr. Strail has a question.

MR. STRAIL: Page 2, the Executive Law requires that Attorney General shall cancel the certificate. Does the hearing aid dealer have a certificate of business in New York State?

MR. RYAN: Yes. A certificate of doing business has to be filed by corporations, partnerships, people doing business under a name other than their own with the county clerk in the various countines before they are permitted to conduct business in the State of New York. Without this letter they wouldn't be permitted to do business.

SENATOR PRESENT: Not the salesmen?

MR. RYAN: The individual salesmen are not, but the dealership would be.

MR. STRAIL: How about self employed dealers without a corporation or being incorporated?

MR. RYAN: A person who is self-employed, operating alone as just Mr. John Jones, would not need a certificate of doing business. I think that is a somewhat unusual situation.

MR. STRAIL: And the bill would prevent the public from, or would protect the public from "quacks".

MR. RYAN: I don't object to the concept behind the bill. I agree with the bill. I just think that the establishment of a Board, a peer review Board, insulates the consumer from the Attorney General, and I think that putting hearing aid dealers under the professions article of the Education Law seems incongruous, when this is where we are licensing doctors, dentists, optometrists. I think we have let some other groups in who don't belong under the professions, so I think to expand this is just a mistake.

I would much prefer to see the licensing under some other area than having a self contained peer review Board where there are obviously other people better qualified to determine the competence of hearing aid dealers than hearing aid dealers themselves.

MR. BENOWITZ: The question was would this bill protect the consumers from the quacks?

MR. RYAN: I think it would. I think there are other ways of doing it, though.

THE CHAIRMAN: I want to keep it brief because we are running overtime, but just one other question.

I heard you mention now several times that this would create a barrier or insulate the consumer from the Attorney General's office. Do you believe that any firm, corporation or individual practicing the sale of hearing aids should continue the practice of selling those hearing aids if under numerous occasions there have been complaints filed to the Attorney General's office that have not been litigated, and are waiting for litigation?

MR. RYAN: I think if the complaints have not been determined to be valid, that the person should continue. This is my own personal feeling. This is not what the legislation says.

Under current legislation the Attorney General is able to get a stay before litigation, and can get an injunction against the continuation of doing business.

THE CHAIRMAN: The injunction would still have to be court mandated.

MR. RYAN: Right, but if the Board, even under this bill, if the Board were to revoke -- the Board on its own volition could not revoke the license. It would still have to go to court. Right now, whether the bill contains this or not, you must can't go and stop someone from having a license. The regulations of the Education Department and the CPLR of the State of New York, talking in legal terms, prevents a Board from taking action on its own volition and taking someone's license away.

There has to be a whole administrative hearing and then on top of that there is a whole legal hearing. After the Board has its hearing, it then refers it to the Attorney General, so they are in the same position.

Granted, the Board may have developed a lot of facts and done a lot of leg work that the Attorney General would not be required to do. There is certainly some merit there, but the Board, on its own volition, could not take somebody's license away without having its day in court.

THE CHAIRMAN: There would not be an insulator between the consumer and the Attorney General in that phase of hearing aids.

MR. RYAN: I think the Board could dispose of a number of things before it got to the Attorney General, which in effect is an insulation.

MR. DEMPSEY: I would like to make an observation in reference to what you said, Mr. Ryan, and I think the great advantage to having the Board is the licensing aspect. I set the bill up and it was drafted to provide that the Board can recommend the revocation of the license to the Commissioner. If that license is pulled, they don't have to give it back. It is true they can have an Article 78 proceeding, but the license can be pulled.

MR. RYAN: All the person has to do, from my experience with the opticians -- what it is, in effect, is going to court and asking for a summary judgment. If the other party comes in and says, "I don't agree with their determination, don't deprive me of my livelihood," it is just routine that he will be given his license and permitted to practice. This wouldn't be an Article 78 proceeding.

MR. DEMPSEY: The other point I am trying to make is that the license agreement, the power to license or not to give a license, is some control over the individual himself. You may have a corporation that is engaged in business, and you enjoing the corporation from continuing business. The guy goes out and forms another corporation and starts all over again.

MR. RYAN: Absolutely, and I say in here we agree with licensing. My only question is now are you going to do it, who is going to be the review?

My overall feeling is that the hearing aid dealers should not have a self contained Board, because there are other people that can evaluate the dealers.

THE CHAIRMAN: You submit this bill provides a self contained Board, even though it provides for audiologists and otolaryngologists?

MR. RYAN: I think so.

THE CHAIRMAN: Thank you for appearing before the Commission.

The next speaker will be Dr. Dale E. Harro.

DR. HARRO: I am Dale Harro, Assistant Commissioner for Preventive Services in the State Department of Health, and I am coming as a spokesman for the Department of Health, not as an expert in this particular field.

The State Department of Health welcomes the opportunity to consider the possible benefits to be derived from licensing hearing aid dealers in New York State.

The Department has been involved in the rehabilitation of handicapped persons for many years and in this capacity has had many opportunities to work together with hearing aid dealers throughout the State. Currently, there is a list of more than six hundred outlets for hearing aids in this State approved by the Department of Health. Approval, however, is not intended to mean that the Department has passed on the professional qualifications of the dispensers of the devices. It means simply that an assessment has been made to determine that the dealer in question will be able to honor his commitments to provide the appropriate device as recommended by a physician and audiologist and that he will be sufficiently financially solvent to be able to render service and adjustments, as needed, for the patient for a period of at least one year hence. It is not intended and not considered essential that hearing aid dealers be accorded professional standing based upon an examination of professional training and experience in the elements concerned with the evaluation of hearing loss and its electronic augmentation.

It is considered in the Department's purview to assure that patients purchasing hearing aids purchase the appropriate aid for their need and have reliable service for a reasonable length of time.

Therefore, such licensing as is considered in the interest of the hearing-impaired person by the Commission for the Deaf should emphasize these two points -- the financial integrity of the dealer and the assurance that the instrument being dispensed is the one most appropriate for the recipient.

The related issue of assuring that the public not be exposed to fraudulent practices by purveyors of these devices is also of concern to the Department.

In consideration of the above, the following comments are offered on specific portions of the bill:

Section 7750 - Definitions: It would seem advisable to include in the definitions the term "audiologist" and define that person as one who is certified by the American Speech and

Hearing Association. Under definition (6) of the "practice of fitting and dealing in hearing aids," it would be advisable to delete the last sentence: "A dealer, at the request of a physician or a member of related professions, may make audiograms for the professional's use and consultation with the hard-of-hearing."

Section 7752: In accord with the concept of avoiding the designation of hearing aid dealers as a profession, the Board of Examiners might better be termed simply "Board", and there should be no examination of clinical competence. Otolaryngologists serving on this Board might better be further defined as being certified or eligible for certification by their specialty board and having a specific interest and aptitude for ascertaining and meeting the needs of the hearing-impaired. The Board might better be lodged in the Department of State, since the primary reason for licensure, in the opinion of the Department of Health, should be to assure the dealers' financial and ethical integrity, rather than professional acumen.

Section 7753: It is recommended, therefore, that the powers and duties of the Board in Section 7753 be amended to reflect this position.

Section 7754: Grounds for refusal to issue license; revocation: (1), page 8, line 3, should be amended to include audiologists and paragraph (t), page 9, should be amended to read "any person" rather than "any minor person," deleting "under the age of sixteen," and the licensed physician should be certified or eligible for certification by the American Board of Otolaryngology.

It is the opinion of this Department that there should not be a professional examination, but if the Commission should see fit to pursue such examinations, the sequence and content of these examinations should be given further study. Certainly, the same examination should not be given to applicants who have previously failed. In this regard, the Commission may wish to study further the experience of the Health Department's Bureau of X-ray Technology in implementing Article 35 of the Public Health Law.

Lastly, in regard to licensing, it would seem wise to stagger the expiration date of such licenses, so that the administrative matters relating to issuing, suspending and revoking licenses can be spread over the calendar year and insure the more efficient disposition of the affairs of the Board.

In summary, then, the Department recommends licensure, not based upon professional acumen, but rather based upon an assessment of financial and ethical integrity, this licensure to be based in the Department of State, and that persons dispensing hearing aids be permitted to do so only upon the prescription of a duly trained physician in the specialty of otolaryngology and an appropriate recommendation following evaluation by an audiologist certified by the American Speech and Hearing Association as being qualified to do so.

THE CHAIRMAN: Thank you Dr. Harro. Just a few brief questions.

Can you give the Commission any idea as to how many otolaryngologists and audiologists there are in the State of New York, and in the opinion of perhaps yourself on behalf of the Department, do you feel that there are enough of these people in the State to serve the needs of the hearing-impaired?

DR. HARRO: I cannot give you the answer to the first question off the cuff, but it is obtainable. We have certainly a record of this in our Department's Office of Health Manpower, and I can get this for you.

I would be glad to do so.

I couldn't even give you a ball park estimate, so I won't attempt to.

Consequently, I can't really answer the second question, excepting that I can philosophically, and this would have to be considered worth that much, or that little, as the case may be. It has not been our experience that when standards or qualifications are raised -- and now I am referring to the bill as drafted, rather than the bill as recommended by the Department -- that it limits the availability of people. It rather does upgrade the standards. It does often improve the educational setting in bringing a better level of service to the patients, but this is not without cost.

I hark back to the experience that we have had with licensing X-ray technicians. There were some who felt that this group should not be accorded professional standing, and one of their arguments was that it would result in a shortage of X-ray technicians. It did reduce the number of people taking X-rays. It did not reduce the number of X-rays being taken. There is a difference. There is a distinct difference, as a matter of fact.

It did reduce the number of schools training X-ray technicians. It did not reduce the number of qualified X-ray technicians being trained. This is another distinction I think that should be made. The quality of the X-ray technicians that are being developed is improving annually, and the same examination is not given over and over again.

As a matter of fact, different examinations are being given from year to year, because the students are now being turned out with a better level of training. I do not anticipate, therefore, that there would be a long period of time that patients would have to wait; but if there is a period of time that patients have to wait, I consider this in the best interest of the patient, because the device that he would end up with would be one that would be usable. While the immediate cost might seem greater to to through an otolaryngologist and an audiologist, the long term cost would be significantly reduced, because the patient would not be exposed to devices that are not appropriate.

THE CHAIRMAN: Assuming that we do pass a licensure bill in this session, and assuming it does take effect, I just now query would it not be advisable in the Commission's standpoint to perhaps pass something that we can live with now and perhaps take a view in the future of amending this view as time wears on, when there is the availability of the people that we need in the area to service the need of those who are handicapped.

Perhaps what I am trying to say is that if we now try to find Utopia in this bill, would it create the hardships on the handicapped, or will it really help the handicapped?

Maybe you can give us some light on that.

DR. HARRO: A hearing deficit is a long

term problem, and time is not nearly of the essense as it might be for requiring open heart surgery. But in the case of open heart surgery, we were very careful not to open the doors to anyone who wanted to do open heart surgery.

We were careful to find places that were able to do it and to prepare others to do it, so that now in New York State one does not need to wait -- as far as the waiting list per se is concerned.

THE CHAIRMAN: My concern is this. In some of the testimony offered in Rochester it was testified that there were shortages throughout certain parts of the State of audiologists and otolaryngologists and that these people in those sections of the State might find it extremely difficult to have a prescription set up by these people before they can get a hearing aid.

This is what you are proposing as an alternative, and I say that if we do find that there is this shortage, would it not be advisable at this juncture to perhaps consider the bill as it is in that section of the bill, and as we find we are training more audiologists and otolaryngologists that we then can amend this bill to include this at a later date.

What I don't think that the Commission should do is to create a hardship for people if these things are not available, that we think should be available to them.

DR. HARRO: I don't think the Commission is creating any hardships. The Commission is trying to meet hardships that are already there.

I think that the shortage is most probably geographical rather than numerical.

Certainly this is true of physicians. We have a maldistribution of physicians, not a shortage.

I might be taken to task for this, because when you call for a doctor you don't get one. I am aware of this. I call for doctors and don't get them either, in my own position.

Really it is a geographical rather than a numerical shortage among physicians.

THE CHAIRMAN: This is what the testimony offered.

DR. HARRO: If this is the case, this is what highways and cars and buses are for, to bring the person in touch with the need and in touch with the person who is thus qualified to meet that need.

If this is the question, this is what I think the Commission should be addressing itself to, rather than a sub profession.

THE CHAIRMAN: Maybe I could clear up what I am trying to say.

Geographically, this is correct, that there is a shortage in certain parts of our States of audiologists and otolaryngologists. However, there is no shortage of hearing aid dealers geographically. This is the problem, as offered in testimony in Rochester.

Geographically the people that are handicapped are pretty well served by hearing aid dealers. They are not as well serviced or can be well serviced by audiologists or otolaryngologists. This is the problem, and I wonder in the testimony that you have offered if perhaps we are not going to create a problem for these people in making that a requirement first before a licensed hearing aid dealer would be permitted to sell a hearing aid device.

DR. HARRO: It may create a problem because of current practice rather than because of what is best for the people.

What happened with the X-ray technician bill was that the general practitioners who used to have their wives or secretaries take X-rays have now been referring them to the technicians.

These things have a way of taking care of themselves, and the comment was made there aren't enough to take care of all of them. I think we heard testimony this morning that there is an effort and probably a strong effort being made to meet this deficit of audiologists and otolaryngologists. But if we can bring the deficit of these people with these services to the people that need the services, that makes more economic sense, and I am thinking of public health.

It makes much more sense of taking the community to address itself in this connection rather than taking a group that offer no pretense of being a professional man.

THE CHAIRMAN: On page 2 of your testimony, Doctor, under Section 7750, you say that "It would seem advisable to include in the definitions the term 'audiologist' and define that person as one who is certified by the American Speech and Hearing Association."

Could you tell us why you feel this is so?

DR. HARRO: I think this is in line with my feeling that the audiologists should be doing this. If the audiologists were interposed between the otolaryngologists and the hearing aid dealer he wouldn't need to do it. Indeed, I think this is the practice for children. It is not the practice for the audiologist to be interposed between otolaryngologists and hearing aid dealers in the case of the physically handicapped person? I am asking the Doctor from Montefiore.

A VOICE: They must go to an approved hearing and speech center, regardless of whether this is Medicaid or under the State Aid Program.

THE CHAIRMAN: This is true for children.

A VOICE: Under twenty-one. Anyone under twenty-one years of age receiving a hearing aid under Medicaid must go there too.

DR. HARRO: This is because we consider it the best investment of the money. If we consider it the best way for State investment, why not for private investment.

THE CHAIRMAN: I understand that, but you are now extending it to all persons.

DR. HARRO: I would.

THE CHAIRMAN: That was the question. Would it be practical at this juncture, under the proposal of this bill, to make it all inclusive at the one time? I think you answered my question in that respect anyhow as to the reason.

Any further questions?

MR. BENOWITZ: I have one.

In Rochester hearings reference was made to an otologist and the term otologist was used interchangeably with the audiologist, and today nothing has been referred to the otologist.

DR. HARRO: My feeling is that the otologist is a physician as is the otolaryngologist. We are just using the term interchangeably. And audiologist is not an otologist. I think we are just playing with words here and I have spoken to the point of the otologist and the audiologist.

THE CHAIRMAN: Any further questions?

(No response.)

On behalf of the Commission, I want to thank you, Dr. Harro, for coming here and taking the time out.

Dr. Bertram Thorne will be our next speaker.

DR. THORNE: First, I would say that I have a PhD rather than an MD, but nevertheless I am talking for the ear, nose and throat persons at Albert Einstein College, and for those who are involved in hearing testing and hearing aid fitting under the A and P service.

In those terms we would like to point out that first of all we should consider that there are three different types of individuals that are involved in this hearing aid picture. The first is the otologist, who we feel are the individuals who are experts in examining the ears, and we feel that each individual who does need a hearing aid should first of all be seeing an otologist.

Consequently, the hearing aid dealer should be put in a position of knowing that this is one of the first steps that he should adhere to. Why? Because it is true that he is a hearing aid dealer.

He is dealing with an instrument which to him may or may not be like a television set, where he may have the impression, due to lack of training, background, or the profit motive, that he simply says which one do you like, try it on, if you have the money, fine.

We take the position that the first step, regardless of who refers them, is to the otologist.

The second step is the second individual in this line of command, if you will, or this line of protecting the consumer, which is the audiologist.

Here is an individual who is devoting his life to the specialty of not just hearing and testing, but knowing all about the thing we say is audio, what hearing is involved in, and what hearing is in terms of the development of language, the development of children, and the development of speech.

Consequently, it would seem to us that whether it is the otologist who refers it, or it is the hearing aid dealer, the next step, rather than the first step in this is now to to to the audiologist for this kind of diagnostic testing. Obviously there is an interchange of information here, and how you do it in terms of whether you do it in writing, prescription, or what have you, I believe can be ironed out in re-writes and anything of this nature.

However, this would then be the second step. Why the audiologist? I stress the point of training, but we at Albert Einstein would underline another part.

It is not simply training in the fact that a hearing aid is a hearing aid, or hearing problems are hearing problems, but there is an ethics that goes behind this which we feel comes out of the training that one individual has.

If you are trained as a salesman, which does not mean you are not an unethical person, there is an ethic behind salesmanship, but salesmanship is exactly that, and there is no profit motive in the exchange of testing and information that goes on at the present time between the audiologist and the otologist.

Now, when we enter into the realm of the profit motive and into the area where the hearing aid dealer is quite capable -- perhaps -- and I underline perhaps -- now we have the opinion of the otologist and the audiologist, coinciding on something that says "We feel that this is the kind of treatment, the kind of instrument that the patient, the client should have."

Now, the hearing aid dealer does as he is trained to do, and what is the training of a hearing aid dealer?

The impression I got from listening to individuals, he is a trained salesman.

Consequently, if you are talking about a package he is probably excellent in getting five hundred dollars or two hundred dollars or one hundred dollars, whichever the traffic will bear, but without the kind of training with that information that is being supplied by the otologist and audiologist, I think this kind of bill is self defeating, because as someone has mentioned before it gives the person the name, but not the game, and I think unfortunately this is going to be bad, because it is going to give him credit where credit is not due.

Consequently, another point of view is that we would like to push for sub professional training. I think professional and nonprofessional is not the point.

I don't think the point is either that is there going to be too few people immediately available. I think one is important, is that when you go for an operation you pick out the best doctor. You have confidence in the fact that number one he is trained, number two he is working for a concern who stands behind him, and number three he has a high batting average.

If I ever go to heart surgery, I am certainly going to look up the score. It is this kind of thing that we have to do for the consumer. We have to initially give, by some kind of sub professional training, and I am not thinking so much of a degree, we are thinking in terms of the kind of courses that would say, "all right, so you have a high school education, but we wish to upgrade you rather than put you through the college system." I think this can be done.

I think too much is being done, and this is a personal point of view, that the ghetto consequently gives you entry to all sorts of things simply by throwing in the crying towel. I don't think this is true at all. I think we have to upgrade these people, but in a very realistic way, if it is those you are concerned with.

If you are concerned with the consumer, let's upgrade the people with the kind of training that would immediately put them in the field. I think who should select the courses, who should do this kind of training, I think there are individuals in any State -- you have the New York State Speech and Hearing Association -- any college that has these kind of courses can be called upon to assist in this. Just as a parallel for this there is industrial training for individuals that do hearing tests in close conjunction with MDs and what have you.

Something of this nature is what we offer.

Finally, to make the last point obvious, I think the opinion we have is that whatever bill is finally organized and passed through, and I would like to summarize this, that the recognition of each individual's part in this chain of events, should be clearly defined.

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I have a feeling that this may not be so in your bill. You are talking about a hearing aid fitter, or dealer who, if a doctor asks him to do a diagnostic cure for him, sure, let him do it. You are asking him to put his confidence in a man who perhaps has no training at all.

That is all I have.

THE CHAIRMAN: Any questions?

MR. HOWES: What did you mean by developing a sub profession?

DR. THORNE: A person would be a sub professional, who first of all did not have a college degree, second of all did not meet the educational requirements of other individuals who are functioning in this same category, if you will. To me a professional individual is not simply involved in the technical aspects, but he has a knowledge that goes far beyond, not simply the does and don'ts of pushing or not pushing a button.

MR. HOWES: You are speaking now of the dealer?

DR. THORNE: Yes.

MR. BENOWITZ: I notice you used only the doctor-who is the audiologist and otologist?

DR. THORNE: An otologist and the otolaryngologist might be the same individual, in that an otologist is dealing with the ear. The otolaryngologist individual is specialized but on a broader basis.

THE CHAIRMAN: Any other questions?

(No response.)

Dr. Thorne, on behalf of the Commission I want to thank you for taking this time in coming here to testify for us.

We will have a recess for lunch and the hearing will reconvene at 1:00 o'clock.

(Whereupon at 12:30 p.m., a luncheon recess was taken.)

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AFTERNOON SESSION

(2:00 o'clock p.m.)

THE CHAIRMAN: The hearing will come to order.

I want to first apologize for our getting started a little late, but we are going to try to catch up so we can get back on schedule.

We will reconvene and Mr. Paul Drozdow will be the first speaker.

We have one other request to make of those who are testifying, if they will please try to speak a little louder. There seems to be some problem in hearing in the rear of the room, so we will have to ask you to speak a little louder.

MR. DROZDOW: Chairman Cerosky, members of the Temporary Commission to study the Problems of the Deaf, hearing aid dealers, audiologists, physicians, if any, observers and that group which I hope is here in large numbers because testimony here is vital to them - the hard of hearing public.

My name is Paul Drozdow. I am a hearing aid consultant in Binghamton, New York and am a member of the Board of Directors of the New York

State Hearing Aid Dealers Association.

Should the hearing aid dealer be licensed? Perhaps! But not for the wrong reasons.

I think it would be appropriate to examine the term licensing for what it is not; then to examine it carefully for what some may hope it might be, and what without foresight it could very well become.

The proper function of licensing is not, as some erroneously believe it to be, a device for conferring status and social acceptance. For if status is the child of achievement, then for the recognition of achievement the placque and monument are proper symbols - not licensing!

The proper function of licensing is not, as some others believe it to be, retributory, whereby the law is slyly asked to subserve the special interests of one group while simultaneously excommunicating another group from its honorably earned right to serve the hard of hearing with continuing competence and dedication.

It is terribly sad, that in addressing themselves consciously to the manipulation of the proposed bill to license hearing aid dealers to their total unmerited advantage, audiologists should choose the path of immature and transparent concealment of motive and a lack of candor.

Were that not so, audiologists would describe their role totally on merit. By having recourse instead to the implantation of a baseless sense of panic and dread in the minds of the Commission, in order to achieve the objective of stifling the hearing aid dealer, the objective becomes tainted and its pursuit indefensible.

The audiologists at the Rochester hearing stated that the testing of clients for pathology is made on a random and selected basis.

If random means haphazard, aimless, wandering, without meaningful purpose or direction, the occurrence of pathology as a hazard in the dealer's fitting of hearing aids either lies at statistical zero, is injected here as a red herring, or worse yet, the audiologist is either untroubled by his neglect of large numbers of defenseless hard of hearing, or is content to perform at a low and callous level of competency.

Despite this admission of random selection, the audiologist describes a Health Team composed of audiologist, physician and hearing aid dealer in which the otolaryngologist and hearing aid dealer are asked to relinquish to the audiologist "the burden of making such difficult decisions."

The oblique result of this humorless suggestion would be to relieve the otolaryngologist of the burden of using his critical faculties and the hearing aid dealer of the burden of earning an honest and socially constructive living.

A dismal inference to be drawn from the restrictive comments of the audiologists is that prior to their arrival, otolaryngologists were incompetent to determine dreadful diseases and were releasing untold numbers of their patients undiagnosed and unaided.

I suggest that those audiologists seeking credit from this Commission on such terms do so on baseless and confused premises.

What, under the best human circumstances could licensing of hearing aid dealers accomplish?

If a major purpose of licensing is regulation and control, with the best interests of the vulnerable consumer recognized, and his rights enforceable by judicial decision, then such a licensing bill has merit. But if the emasculation of the proposed licensing bill serves merely to elevate the stature of the audiologist, it is self defeating and becomes an obstacle to helping the hard of hearing.

It is repeatedly alleged, and in the absence of challenge, as often happens, truth distorted and sufficiently repeated, becomes fact accepted, that the hearing aid dealer is motivated by greed, is academically inept and intellectually barren, is insensitive to his community's needs, is irresponsible and uses these composite flaws to wax fat on the grief of others.

The defect here is that the dealer stereotype is a fantasy built on no solid foundation, and in being so, emphasizes the irony that as testimony evolves here, the primary subject, the hearing afflicted, instead of being the focus of honest and compassionate ministration becomes a commodity to be wrangled over.

We frequently hear the words, "minds, hearts and hands" as being the human elements which are extended to help those in need. They are repeated so often they tend to become cliches and sometimes the butt of suspicious derision.

The fact remains however that multitudes of selfless and talanted people are involved in the process of helping the hearing afflicted, with conspicuous success. And none capable of mature objectivity presume to take sole possession of the afflicted ear.

A recognizable example is A T & T which produces a telephone amplifier for the hard of hearing and severely deafened which operates at or beyond the decibel level at which pain in the normal heman ear begins. It sustains thousands in their need to communicate.

The suggestion that these people should be required to see an audiologist before getting this hearing aid runs counter to reason.

The facts do not support the contention of its members that the American Speech and Hearing Association is any more than a self-created, dues paying, vested interest group, consisting of their own peers, setting their own standards and operating under a self-devised "certificate of clinical competency," which possesses no official connotation except as the audiologists themselves endorse it.

Facts do however support the objective observation that the audiologists are numerically inferior to supplying the colossal needs of the multitudes of hearing afflicted and possess absolutely no externally substantiated superior competency in the selection, fitting and servicing of hearing aids.

It is the hearing aid dealer today, as he has been in the past, who is besieged by multitudes of audiologist and the agencies they represent, for the free supply of new and current hearing aids and their free maintenance so that audiologists may perform what they describe as their indispensable function. It is also to the hearing aid dealer that the client must return when he has been inadequately or incorrectly fitted on recommendation, for a change of instrument.

It is incredible that audiologist should seek to demean the very ones who support them with money, effort and cooperation so that they may hospfully do a better job and in doing so, additionally enrich the lives of the hard of hearing.

To what can licensing of the hearing aid dealer lead on the terms suggested by the audiologists?

It can only lead to the creation of an oligarchy responsible to no one, and an atmosphere conducive to that totally sordid abomination - the favored vendor.

THE CHAIRMAN: Are there any questions?

MR. STRAIL: Why do you feel that audiologists would get the credit for the Commission.

MR. DROZDOW: I don't suggest that they will get credit. I do not suggest that. I merely point out the fact that in view of the unsubstantiated testimony which they have introduced here to create an atmosphere in which they might perhaps influence the Board at the total expense of the hearing aid dealer: I merely pointed out that the evidence they submit can only be accepted in terms of self seeking.

THE CHAIRMAN: May I assure you, Mr.

Drozdow, and those present that all of the testimony granted to this Commission will be studied in its prospective and used in that sense, so let me assure you there is not going to be any favoritism paid to any groups.

MR. DEMPSEY: Mr. Drozdow, is your statement submitted on your own behalf or on behalf of the association which you state you are a member of?

MR. DROZDOW: It is on behalf of the unanimous judgment of the hearing aid dealers association, and, of course, I am not ashamed of the statements here, so I will apply them to myself as an individual.

THE CHAIRMAN: Thank you, Mr. Drozdow for taking the time to be here with us and give us the testimony.

Mrs. Alice Berkowitz will be the next speaker.

MRS. BERKOWITZ: Chairman Cerosky, members of the Commission, Mr. Benowitz, I am Alice O. Berkowitz. I am appearing before this Commission as an individual concerned with the proper treatment of the hearing impaired individual.

In addition, I am the Director of Audiological and Speech Services at the Manhattan Eye, Ear and Throat Hospital.

I would like to commend the Commission for its work in an area which has long been neglected and overlooked. Your contribution in this area may have a lasting effect upon the health and welfare of many individuals and the treatment of the hearing impaired for many years to come.

The main purpose of licensing hearing aid dealers is for the benefit of the public. My comments are directed primarily towards two important areas:

1. Quality medical and health care.
2. Protection of handicapped individuals.

> In this regard it should be remembered that the handicapped individual is one whose needs are different and unique as compared with those of the general public.

In order to solve the problems of these two areas several questions arise, particularly regarding hearing aids and the present methods of sales and selection. In this regard it should be remembered that the purpose of licensing hearing aid dealers is to upgrade the training and requirements necessary to be a hearing aid dealer, and not to preserve the status quo. In addition, the purpose of licensing hearing aid dealers is to provide better and more responsible treatment for the hearing handicapped.

The draft of the bill as proposed does not modify several important areas in the present practice of selling hearing aids which require revision. The bill makes no provision for diagnosis of hearing disorders by an otolaryngologist prior to the purchase of a hearing aid from a hearing aid dealer.

Hearing loss is a symptom of a disease. Therefore, the evaluation of the hearing loss should be made by an otolaryngologist who is able to differentiate and diagnose the ear disorder and make the appropriate recommendation for medical treatment of this problem. To assist the otolaryngologist in this evaluation process, a trained audiologist can perform various tests which measure the degree and type of hearing loss.

Since no piror diagnosis is required to get a hearing aid, hearing disorders requiring medical treatment may go undiscovered. This is particularly serious in situations where the undiagnosed disorder could result in permanent damage to the individual, if not treated. Some examples of this type are acoustic tumors, and middle ear disease. In addition, many hearing disorders can be corrected by proper medical treatment if these disorders are diagnosed promptly.

The appropriate procedure would be for the hearing impaired individual to be examined by an otolaryngologist and tested by an audiologist. The audiologist is specially trained to administer and interpret a wide variety of auditory tests which define and describe the hearing loss.

In this way accurate and meaningful diagnoses could be determined by skilled professionals. Therefore, it is unfair to place the individual in a position where he may not obtain proper medical diagnosis and treatment because his illness was not reviewed by a properly trained individual.

The bill, as presently constituted, does not establish a standardization of procedures for selection and fitting of a hearing aid by trained personnel. Nor does it require the hearing aid dealer to have the specialized training which is necessary in order to make the correct selections. Thus the bill should provide that the selection be made by a trained audiologist or that appropriate training must be obtained by the hearing aid dealer prior to his receiving a license. In this regard, it should be noted, that the audiologist has no incentive to recommend a hearing aid when none is necessary or one which is more elaborate than required by the needs of the hearing impaired individual.

In addition, there is no provision for the counselling and rehabilitation necessary with regard to the use of amplification. Experience has taught us that one who wears a hearing aid must receive a certain amount of training in the use of the hearing aid in order to obtain the maximum benefits that a hearing aid can provide. A trained audiologist is able to determine the benefits which may or may not be obtained from the amplification, and the educational and rehabilitative services essential to the hearing handicapped. This may include the provision of services beyond the limitations of the hearing aid itself such as speech reading and auditory training.

The bill also does not sufficiently take into effect the special needs of children and the growing geriatric population.

I would like to discuss some specific problems in the legislation.

Section 7750 states, in part, "Practice of fitting and dealing in hearing aids means the measurement of human hearing by means of an audiometer or by any means ..." (emphasis added).

Standardized procedures should be more clearly defined. In addition, procedures and facilities for performing audiometric tests, which are to be utilized for purposes of medical diagnosis, should also be standardized.

Section 7754 Subsection 1T provides that "The board may cancel revoke or suspend the license of a dealer who shall fit or otherwise adapt a hearing aid for the use of any minor person under the age of 16 without written prescription from a duly licensed physician from the State of New York."

In order to provide quality care for minors it should be required that a complete diagnostic evaluation be performed by an otolaryngologist who is a specialist in this area. It is not sufficient to merely provide a minor with a hearing aid on the basis of a general practitioner's recommendations. Because of the many complexities of hearing disorders, particularly in the case of children, a complete evaluation and follow-up, including medical evaluation by an otolaryngologist and a hearing evaluation by an audiologist are necessary in order to provide the standard of care which hearing handicapped children deserve.

Section 7755 Subsection 2 provides that an applicant may take the examination for license if he has "graduated from an accredited high school or equivalent."

In order that licensees be more than "salesmen" and comparable to other professionals in similar fields such as opticians or optometrists, it should be necessary that a licensee receive a special training program leading to a degree, with fundamental course work in such areas as: physics of sound, structure and mechanics of a hearing aid, means of repairing hearing aids, audiometric testing, anatomy and physiology of the ear.

Such a degree should be required in order to become a hearing aid dealer, or in the alternative it should be necessary for all dealers to fit hearing aids only on the basis of referral from an otolaryngologist or audiologist.

Section 7755 Subsection 5 provides, in part that, "All applicants examined during a given calendar year shall be given the same examination." In addition, the same subsection provides that "The examination provided for herein shall be given 4 times each calendar year."

All applicants examined during a given calendar year, should not be given the same examination. The examination should be changed for each quarter, if it is to be given 4 times a year. It may be advisable from an administrative point of view to give the examination only 2 times a year as is the case of the New York State Bar examination and the New York State C.P.A. examination.

Section 7756 provides for the granting of licenses without examination. In order to establish the minimum standardized basic qualification for hearing aid dealers, there should be no licensing without examination.

As presently conceived the license will be of little use and will not improve the performance or quality of service provided by a hearing aid dealer. On the contrary, it may tend to condone and perpetuate the very practices which the law is designed to eliminate. It may be more advisable to have a special test for those persons who would meet the qualification for a license without an examination as this section is presently constituted.

Section 7758 provides for a one year temporary permit without an examination and for an additional 6 months temporary permit after failing to pass the licensing examination. This section would permit a person who has not passed the examination to practice as a hearing aid dealer and fitter for a period of 18 months even though such a person had failed to display any knowledge or experience in this area. Such a provision of the law does not benefit the hearing handicapped in anyway or provide for the anticipated high standards of hearing aid dealers and fitters for which the law is intended.

I would like to make two general recommendations regarding the licensing of hearing aid dealers and fitters. These recommendations are for the purpose of providing superior medical care and protection for the hearing handicapped population, which is the primary purpose of the proposed law.

The recommendations are:

1. The law should provide a program whereby an unscrupulous hearing aid dealer will not be permitted to sell aids which are not be permitted to sell aids which are not beneficial to the hearing handicapped person. This may be accomplished by requiring evaluations by an otolaryngologist and/or an audiologist prior to the sale of the hearing aid. These professionals can then recommend

the most appropriate hearing aid for the individual as based on their examination and recommend appropriate rehabilitation procedures. In addition, appropriate medical treatment would be provided. The hearing aid would of course be fitted, serviced and sold by the hearing aid dealer.

2. The law should establish special educational training requirements for hearing aid dealers which are comparable to those of opticians or optometrists. By this type of educational program, hearing aid dealers will be well qualified and sufficiently knowledgeable to handle the various problems of the hard of hearing and deaf.

This provision will result in more qualified hearing aid dealers, and therefore better service to the public.

THE CHAIRMAN: Thank you, Mrs. Berkowitz. Are there any questions?

MR. FRIEDMAN: As I understand you, you feel that buying a hearing aid is a three step operation, one, the otolarynogologist, two the audiologist, and then third, the dealer.

Is this what you feel?

MRS. BERKOWITZ: Yes.

MR. FRIEDMAN: That's expensive.

MRS. BERKOWITZ: When we are thinking in terms of medical care, and a hearing problem is a medical problem, I think it warrants the additional expense of being sure of what the hearing problem is and what the pathology is that is causing it, rather than allowing an individual to just purchase a hearing aid which is also very expensive.

THE CHAIRMAN: Any further questions?

MR. STRAIL: Hearing aid dealers are not qualified to give a hearing aid without having the audiologist's examination?

MRS. BERKOWITZ: Is that a question?

MR. STRAIL: Do you feel that hearing aid dealers are not qualified to sell hearing aids without medical opinions?

MRS. BERKOWITZ: I feel that they should not be allowed to sell them without medical opinions. There are certainly dealers right now who are qualified. There are also dealers who are not qualified, and I feel that if we are going to have the proposed legislation, then there should be certain criteria for this to be followed through.

THE CHAIRMAN: Any other questions?

MR. HOWES: In eliminating 7758, which is the creation of permits, you in fact take away the opportunity for the training of the novice under the supervision and training and someone who holds a valid license. How can this training, for example, be accomplished by the hearing aid dealer for the people that he wants to bring into the organization if not in this way?

MRS. BERKOWITZ: It was not clear to me on the basis of the proposed legislation, if this would be completely under the supervision of a licensed dealer, or if there would be a licensed dealer whose license was in that particular office, but not necessarily that he was present in that office and therefore training the individual.

The way I read it, it sounded to me as if this was a person who wanted to become a hearing aid dealer, was really not being trained by another individual, but would have this period of time, which comes to eighteen months, to take several examinations and finally hopefully pass it. It was not really clearly outlines that there would be somebody supervising them at all times.

MR. HOWES: The one sentence says "The application shall be accompanied by an affidavit of a person holding a valid hearing aid dealers and fitters license and shall state that the person will be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him."

I mean, that is sort of about as well as you can state the idea of somebody trying to train somebody.

MRS. BERKOWITZ: In other areas of the bill it is stated that a licensed hearing aid dealer may obtain licenses to obtain other people in the office, when he may not be always present in the office.

I feel that when an audiologist is training, there must be an individual on the premises at all times who is supervising their service.

MR. MORRIS: Mrs. Berkowitz, do you believe that a person who would be capable of passing a written, oral, and practical examination, such as outlined in this bill, would be more likely to perform proper service to the hearing handicapped than one who was unable to pass such an examination?

MRS. BERKOWITZ: As far as passing the examination this may be, but according to the bill an individual may be working as a hearing aid dealer for two years prior to the bill going into legislation, and passing, and still may become a hearing aid dealer, a licensed hearing aid dealer, and would not have qualified under these standards. Thereby, I feel there will be many years before we would have what we would consider to under the bill qualified licensed dealers.

MR. MORRIS: Yes, however, the "grandfather clause", not withstanding the standards that are set forth for the licensure examination seem to correspond pretty closely to those which you set forth as being ideal standards. So at least for the future then this bill would certainly perform a positive function for the hearing impaired.

MRS. BERKOWITZ: In terms of the examination procedures.

However, I do feel that there would have to be some kind of a training program to prepare these individuals for this kind of examination.

THE CHAIRMAN: Thank you very much, Mrs. Berkowitz for coming and testifying.

Dr. Maurice Heller will be our next speaker.

DR. HELLER: Mr. Chairman, and members of the committee. I am an otologist practicing in New York City.

THE CHAIRMAN: Just one moment, Dr. Heller. Would you talk as loud as possible? We had some problem with those in the rear of the hearing room.

DR. HELLER: I repeat that I am an otologist and have been practicing in New York City since about 1933. I have prepared a small curriculum which I will hand you, but I see no necessity of reading it, unless you want my qualifications.

THE CHAIRMAN: That's all right.

DR. HELLER: I will tell you at this particular time that I have been on the staff of Manhattan Eye, Ear and Throat Hospital, and the Mount Sinai Hospital for many years now.

I am the Chief of the Ear, Nose and Throat Audiology Service of the Outpatient Clinic of the New York Veterans Administration Hospital. This is here in New York City.

What I have heard is rather illuminating to me because none of this testimony in the various aspects have I heard before.

The question was asked of me, and this was asked several years ago, do I think that hearing aid dealers should have some kind of licensing.

It was my feeling then, and it is my feeling now, that any individual who serves the public with a prosthetic device should have some kind of training, some kind of licensing.

How this is going to be defined ultimately certainly I cannot answer now, or could not answer for a very long time, if I could at all.

Nevertheless, it is my feeling that hearing aid dealers who service the public and deal with the illnesses of the public must have the same responsibility as other individuals who sell or deal with prosthetic devices.

If we take this as a basis, then I think others can plan on what to do in terms of the preliminary training that people have for this. That is the technical training of the equipment itself. Something of the behavior of individuals, of the diseases, of the anatomy, and the physiology. There is no use in my citing examples in other fields of prosthesis and the like, but if I can contribute anything by trying to answer what questions you may have of me, I would be happy to do so.

I cannot assure you of what the answers might be.

THE CHAIRMAN: Are there any questions the Commission members or Staff would like to ask of Dr. Heller?

DR. HELLER: I might add, if I may, Mr. Chairman, that it is my understanding that this is the first opportunity this committee has had for an otologist to appear before this Commission, so that you might get the opinions of otologists since I have been affiliated with many otologists in the City for years now. I think some of the things I might say or answer would be in accordance with their philosophy and concepts of good medical practice.

THE CHAIRMAN: But you are not necessarily binding the other otologists.

DR. HELLER: I bind no one but myself.

THE CHAIRMAN: Are there any questions that the Commission members have?

MR. DEMPSEY: Doctor, can you tell us approximately how many otologists there are in private practice in the State of New York?

DR. HELLER: I tried to find that out one way or the other. I would guess there are several hundred. Possibly in the neighborhood, in round figures, five hundred diplomats in otolaryngology throughout the State of New York.

MR. DEMPSEY: Have you been here throughout the hearing today?

DR. HELLER: No, sir.

MR. DEMPSEY: You have heard, Mrs. Berkowitz, whose statements are not dissimilar to several others that there should be a procedure, the basis of three steps involving the otolaryngologist, audiologist, and the hearing aid dealer.

Would you recommend to this Commission that that would be the proper or the only procedure that should be adhered to?

DR. HELLER: From my own personal experience and that of colleagues of mine, who have been vitally interested for a quarter of a century or more, when we used audiometers, which were battery operated, long before World War II, we would practice medicine then, we practiced the techniques of testing of hearing. We tested our own patients, we made our own diagnosis, and I will say that with the current tests which many of the audiologists have developed that we are more precise in our diagnostic techniques.

Nevertheless, those of us who have been in otology, and who have sought competence in ear, nose and throat during our residency, and have participated in audiology training programs at various hospitals. Otologists too can do this kind of work, at least equally effectively. So that in answer to that question is the audiologist required for the examination and diagnosis of hearing losses, my answer is no.

If you ask is the audiologist necessary for speech training, lip reading training, auditory training and the like, I am in complete agreement.

These are long term educational processes. Certainly when you come to the little children, where the matter of not being able to hear and having to be taught how to hear, to listen with a hearing aid, and how to speak, if this is possible, and how to be educated being a deaf individual, you need a special kind of training. No question about it.

The audiologists in the schools that deal with the so called deaf are absolutely necessary. You can't escape this.

If you ask me if its practical at this stage in our society to go through the steps that Mrs. Berkowitz, I presume demanded, it is theoretically desirable. It is impractical dollarwise. All you have to do is ask Medicaid and they will tell you they haven't got the money to do it, number one.

It is impractical at the present stage, because the demand of the acoustic handicapped numerically are so many, so great, that steps must be taken to permit the hard of hearing to obtain prosthetic devices for their health and well being. When the day comes when there are enough professionals to do all these services, when the legislature has the money to pay for it, and it will be required by the legislature, then I would go to an ideal level, but it is utterly impractical at this particular time.

The sort of thing that I have thought of is I see Medicaid patients in my office daily. These are people who have had hearing losses for years, and fortunately now society will finance their help for some kind of recovery into a speaking society and a hearing society.

If you take seventy, eighty, eighty-five, ninety year old people and put them through a programing of auditory training you will get nowhere. This is well known. I am talking in general. You can't teach a seventy-five year old man, who has got cataracts and the like to do lip reading. It just doesn't work. These things have been tried. These older individuals with their hernias and their other physical defects arthritis, and the like, cannot be transported around New York City today for all the services which we know, which I agree with are ideal.

You are lucky if you can get the individual in for examination.

Medicaid, for one, has done this. To my knowledge, no individaul can obtain a hearing aid without an otological examination: But these people cannot come out from the suburbs of Metropolitan New York through the subway in bad weather for more than one or two examinations and obtaining a hearing aid from a dealer. You can't expect these old people to travel this way. This is practical living.

I would also interject at this particular moment, just to confuse the issue, that I have been responsible for the issuance on the rarest occasions to people with normal hearing whose psychiatric disease was so severe that something would have happened if a hearing aid wasn't issued; So the diagnosis was made--this is a psychiatric diagnosis--and it is requested of you to issue a hearing aid to alleviate the severity of this man's psychic disease, even if we know he has normal hearing.

ASSEMBLYMAN LEVY: Should the hearing aid dealer also be in the same position?

DR. HELLER: No, this is a sophisticated diagnosis, a diagnostic thing. I can't answer for hearing aid dealers, but I don't think they would want to.

ASSEMBLYMAN LEVY: Has it ever happened before?

DR. HELLER: What?

ASSEMBLYMAN LEVY: A hearing aid dealer sold a hearing aid to one that actually didn't need a hearing aid?

DR. HELLER: I am totally --

THE CHAIRMAN: For other than psychiatric reasons.

DR. HELLER: I would be willing to guess yes, but I don't hold them responsible for it, because anything can happen. People are sold things of all categories, which they don't need.

MR. DEMPSEY: Doctor, in your practice, I assume then, you come into contact with many people who wear hearing aids?

DR. HELLER: Yes.

MR. DEMPSEY: In a history you might take of these people do you find most of them come directly from a hearing aid dealer with a hearing aid, without the advantage of an audiogram by an audiologist?

DR. HELLER: Most of my patients come to me for my medical opinion. Some of them come to me directly, having been referred, in some instances by dealers.

I take my own history, do my own ear, nose and throat examination, and perform my own tests, and if I feel that that individual has an acoustic loss of a magnitude, one, and of a characteristic in quality, two whereby amplification my prove beneficial, then I refer that patient back to the referring source.

When the patient comes in and I feel for whatever reasons I determine as an otologist, that this individual should not get hearing aid, he is not referred back to the referring source.

Sometimes I suspect to their perplexity: But they don't get a hearing aid on my prescription, or recommendation.

MR. DEMPSEY: You do not then recommend a specific make or type, or anything like that?

DR. HELLER: Generally not, unless I do my own fittings in certain categories of my own patients. I will do some fittings of my own and I have done it for years.

THE CHAIRMAN: Mr. Howes

MR. HOWES: Doctor, you suggested at the beginning that anybody who deals with the public with prosthetic devices should have a certain amount of training or professionalism: I am not sure just how you phrased it.

My question is: Other that the prescription and the advice which the otologist might give to a hearing aid dealer, who knows his stock, who knows his variety, and who knows how to fit, what other training does he need?

DR. HELLER: The dispenser of the hearing aid?

MR. HOWES: Yes, according to the otologist's prescription.

DR. HELLER: He certainly needs the technical training of the construction and operation -- I don't mean the matter of turning on the switch -- but the electronic operation and behavior of hearing aids, the characteristics, the things that go into the hearing aid. Certainly this is one thing.

In addition, they should have a minimum, whatever that might mean at this stage, a minimum knowledge of a basic anatomy, physiology, disease of the ear: Not that these people are expected to make a diagnosis, but any individual who is dealing with a human being, or a part of the human being, should know something of the part of that individual. I think that's where education is required and should be required.

I know many of them have in one way or another attempted to do this.

ASSEMBLYMAN LEVY: Doctor, have you had the opportunity to read this particular bill?

DR. HELLER: No, I have not. I would like to take a copy, if I may, please.

ASSEMBLYMAN LEVY: I would appreciate it if you could get your comments to the Chairman on this particular bill as so structured with its language, before we go back to the Assembly again and start working this bill over.

DR. HELLER: I would be happy to try it.

THE CHAIRMAN: Mr. Morris.

MR. MORRIS: Doctor, in the section of the bill referring to hearing aid dealers fitting a hearing aid to somebody under sixteen years of age, earlier testimony given today indicates that some of the people testifying here feel that the person under sixteen years should be examined by an otologist first, rather than a duly licensed physician, as set forth in the bill.

Can we have your comments on that?

DR. HELLER: Yes, if I may refer back, as some of my own experience goes, I have been with the Technical Advisory Board for the Speech and Hard of Hearing Committee, The Bureau of Handicapped of the City of New York, ever since the inception of this program, and have had an opportunity for years now to discuss some of the aspects and the problems of the program.

I think that any child, taking arbitrarily the age of sixteen -- any child such as you described, could not be examined just for a hearing loss and a hearing aid, but you must take the total child.

In other words, you need a general medical examination, the various kinds of blood studies, whatever are necessary to establish clinical normal levels, orthopedic, psychological, and all the other elements of a growing child, of which the ear is a part.

Four or five years ago at the Mt. Sinai Hospital we had a program going -- I thinka two year program -- for the handicapped child, and every handicapped child, regardless of the nature of the handicap, had a complete team survey, and this is what you do with children, because some day they are going to sit here, not us.

THE CHAIRMAN: Any other questions?

(No response.)

THE CHAIRMAN: Doctor, I want to thank you for testifying and spending your time.

Mr. Paul Gilbert will be our next speaker.

MR. GILBERT: Mr. Cerosky and members of the Commission, ladies and gentlemen. I had a prepared statement which at the conclusion of my testimony I was going to turn over to you, Mr. Cerosky.

However, during the past several hours I have been so busy scratching notes on here that it has become undecipherable to me, and I would not impose on you to read this.

Therefore, I promise I will retype the statement and get it to you within twenty-four hours.

My name is Paul M. Gilbert, and I am the owner of the office known as the Hearing Appliance Center located at number 3 East 14th Street, here in Manhattan.

This year marks my twenty-third consecutive year in the hearing aid business, and I speak officially as a representative of the New York State Hearing Aid Dealers Association.

I am presently President of the New York State Hearing Aid Dealers Association, and immediate past President of the New York City Hearing Aid Dealers Guild, and a member of its Board of Directors. I am Secretary of the Executive Control Committee of the Consumer Frauds Division of the Attorney General's Office for the Code of Ethics for the hearing aid industry in New York.

I hold certification from the National

Hearing Aid Society, and I possess the masters degree in audiology from Columbia University, as of 1964.

It is certainly not my intent to bore the members of the Commission with a recapitulation of the testimony presented at the opening hearings in Rochester last month, or even to refute some of the statements made at that meeting.

This is past history and no purpose can be served in rehashing it, but I can now give Mr. Dempsey an accurate answer to a question that he asked then to me, about the number of hearing aids sold in New York State annually.

I made it my business to look that up. In 1968 forty thousand one hundred sixty-three hearing aids were sold. This is chronicled by a certified accounting firm, which is hired by the hearing aid industry in Chicago.

For the first half of 1969 there were twenty thousand seven hundred eighteen sold. If we project this figure we can safely assume that almost forty-two thousand aids were sold in 1969.

Although we, the hearing aid dealers in

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New York, are on record as being opposed to licensing at the present time, with an open mind and now that we've had an opportunity to study the proposed legislation, we now feel that there is considerable merit in the bill and it certainly deserves much consideration, providing there are certain changes made.

Why should I be an exception, everybody else has been tearing the bill apart.

There are two in particular which I refer to, that have been mentioned before. Section 7752, page 4, line 6. "The Board of Examiners shall consist of four hearing aid dealers and fitters, two otolaryngologists and three audiologists."

There are twenty licensing laws for hearing aid dealers now in effect in the United States; there were eighteen in Rochester. Since then Hawaii and Wisconsin have passed laws. In none of them are the hearing aid dealers outnumbered on the Board of Examiners as in this proposed bill.

Certainly no one is in a better position to police their own industry than the hearing aid dealers themselves. This has been obvious as publicly attested to by the Attorney General himself, who has witnessed the efficacy of the Code of Ethics.

While we welcome the advice and help of other related groups to be nominated by them is an arbitrary factor. Members of the medical, dental, legal, and optical and other professions police themselves effectively.

As a matter of fact, in Florida, there is a law licensing audiologists, 8B1181 passed June 6, 1969, license in speech pathology and audiology.

The advisory counsel to this bill consists of five speech pathologists and audiologists. There are no otologists on that Board and most certainly, as you may expect, no hearing aid dealers on that Board either.

Secondly, may I respectfully direct the attention of this Commission to Section 7756, page 13, line 18. "License without examination." This is a grandfather clause, if you will.

It states "An applicant shall present satisfactory evidences to the Board that he has the requisite skill, is a person of good moral character, twenty-one years of age or over, and has been engaged in the practice of dispensing hearing aids in the State for at least two years prior to the effective date of this article..."

Who determines these effective skills and how will they be ascertained?

Is it the fact that he has conducted his own hearing aid business for two years? Is that satisfactory evidence?

It does seem to me that this section requires clarification and should be more specific.

Aside from these two major points and perhaps one or two minor ones, we, the dealers of New York State, would say that this proposed bill is not a restrictive or a punitive measure and definitely affords protection to the consumer.

I have the highest regard for the abilities and skills of the audiologist. My vast respect for their knowledge and skills is beyond dispute. They do say that imitation is the sincerest form of flattery, and to prove the truth of that contention, I went back to Columbia University, at my advanced years to secure the masters degree in audiology, in an effort to improve my knowledge and reach their level academically.

I am also proud of the fact that I have maintained excellent relationships, based on mutual respect, with many audiologists for some fifteen years.

No one, least of all I, has any dispute with the importance of the audiologist as a member of the health team. The otologist, the audiologist, and the hearing aid consultant. But hearing aid evaluation and fitting and selection of hearing aids is not a subsidiary of audiology.

There is considerable dispute throughout the United States among leading audiologists themselves, both as to the validity and the value of such hearing aid selection.

The speech and hearing therapists in their academic training, of necessity, learned something about the fitting of a hearing aid and the care of the hard of hearing, but this does not make them experts in this particular field. This is not a science, but an art, and required weeks and months, and years of empathy, care and counseling.

Simultaneously, the hearing aid consultant, by virtue of his training and experience, of necessity, learned something about audiology, but this certainly doesn't make him a speech or hearing aid pathologist either.

It is agreed by all members of the health team that children require special handling in speech and hearing clinics, and this is where the audiologist, along with the pediatrician, the otologist, and the psychologist, is all important. There are so many factors involved in testing children, that only the pediatric audiologist is really qualified to do. I myself wrote a paper recently advocating this policy and received many warm congratulations from the other otologists for that point of view, which happened to coincide with their point of view.

However, to indicate that all adults require the same audiometric work that children do, or to indicate that the otologist is incapable of diagnosing a hearing loss, or medically or surgically correctable loss, this is not within the ordinance of audiology per se.

Once the otologist diagnoses a hearing loss requiring amplification, here is where the art of the hearing aid consultant is all important.

Because a man sells a product does not mean that he is less honorable or less ethical than one who sells a service.

Last summer the hearing aid dealers suggested to the audiologists the formation of a small ad hoc committee consisting of members of both groups to sit down together in an atmosphere of calm reasoning to discuss matters of mutual concern. The suggestion was originally received favorably by the audiologists and, although they have not as yet scheduled a meeting, it is to be hoped that we can soon meet in an effort to resolve differences.

It is of primary importance that each segment of this group work harmoniously together for the eventual benefit of the hard of hearing and put an end, once and for all, to the wrangling and disputes that have in the past characterized this relationship.

It is a consumation to be wished.

May I thank the Commission for granting me this opportunity to testify before them.

THE CHAIRMAN: Thank you, Mr. Gilbert.

Just a few questions.

It has been suggested in prior testimony that perhaps the agency that would be proper in this licensing -- to handle this licensing, would be the Department of State.

Do you have any comments to make with that rather than the Department of Education.

MR. GILBERT: I would maintain that it should be maintained under the Department of Education. The purpose of this bill is not only to protect the consumer, but upgrade the hearing aid dealer. I think it should be kept within that province.

THE CHAIRMAN: The testimony previously offered also suggested that perhaps the bill should contain a provision testing existing dealers before they would be licensed.

MR. GILBERT: If you recall, if the dealer can present a requisite skills, or show of the necessary skills he can be licensed without an examination.

If by means of oral questions, it can be ascertained by virtue of his experience he fulfills all of the basic legal requirements, I think a written examination would be unnecessary.

THE CHAIRMAN: It can be done by oral examination?

MR. GILBERT: I believe so, by the Board of Examiners.

THE CHAIRMAN: Would there not be a practical problem involved in this? The Board would then have to query how many dealers in the State of New York?

MR. GILBERT: Quite a few, sir, because the great majority of them have been in business for more than two years. I agree with you that a "Grandfather clause" makes it illegal to put a person out of business, but, however --

THE CHAIRMAN: I don't want to get into that aspect. I just want your comments concerning some other testimony that was offered earlier, dealing with your business. Frankly, I would be interested in knowing how the dealers feel about these suggestions.

MR. GILBERT: We have had people in this field for ten, fifteen, twenty years render a valuable service for the community, are held in respect by the various professional and ancillary groups do a fine job, and yet put them down to do a written examination and they literally freeze.

I had this experience, sir, because in our national certification I have to proctor people taking the final examination. I have seen these people give a pure tone test with masking. I have seen their fittings. I have seen their ear molds. I have seen patience and empathy and care with which they handle these hard of hearing people. Put them down in front of a written test and they are completely lost.

This can be ascertained by an oral examination, I think, sir, where they might be more at ease.

THE CHAIRMAN: You directed your comments to page 4, line 6 of the composition of this Board as to not particularly liking the composition as set forth in this bill.

Would you have recommendations as to what your association would like to see in a licensing bill as to the composition of the Board?

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MR. GILBERT: We, the hearing aid dealers, who are being licensed and have asked to police our own industry, would be outnumbered in the group.

THE CHAIRMAN: You suggested this in your testimony. What would you recommend it be?

MR. GILBERT: Three or four hearing aid dealers, one audiologist, and one or two otologists to give us advice would be sufficient, sir.

THE CHAIRMAN: Are there any other questions?

ASSEMBLYMAN GRIECO: Mr. Gilbert, on the same subject, then it would be your opinion or recommendation that if this legislation would prevail, that the majority of the nine members which have been suggested should be those of the hearing aid dealers?

MR. GILBERT: The hearing aid dealers?

ASSEMBLYMAN GRIECO: You feel they should be in the majority on the committee?

MR. GILBERT: The very people that are being regulated as evidenced in the other bills in the United States.

ASSEMBLYMAN GRIECO: Even though you mentioned something about the State of Florida.

MR. GILBERT: That is an audiologists' bill, not a hearing aid dealers' bill.

MR. BENOWITZ: No where in the bill is audiometer mentioned, but back in 1968 the report to the Governor, the Commission's report said something about a standardization of the instrument, and also in the Federal Hearing Level, there is evidence that no two machines were calibrated the same.

Do you think the bill should include a standardization of calibration of such?

MR. GILBERT: Very definitely, Mr. Benowitz. If the audiometer is going to be part of the hearing aid dealers' equipment, it has to be calibrated, standardized, and I know in my own particular case, and all the hearing aid dealers I know, it is done twice a year and sometimes more often, depending on how often that instrument is used.

MR. BENOWITZ: Who does the calibration?

MR. GILBERT: I have a man who is tops in the calibration of audiometers.

MR. BENOWITZ: He is not standard in the industry?

MR. GILBERT: I think it should be, yes.

MR. MORRIS: Earlier in the day Dr. Harro testified that there are six hundred outlets for hearing aids in the State of New York which approved dealers for State aided programs, rather in excess of six hundred.

How many members does your organization have in the State of New York?

MR. GILBERT: We have two hundred twenty-seven signers of the Code of Ethics, sir. Those six hundred outlets I do not believe are all six hundred dealers in the State of New York. But if you were to take each dealer and multiply that by the number of instruments he carries in his line -- for example, the company I represent has thirteen different instruments -- if there are forty-five dealers approved by the New York State Board of Health, and each one has approximately that many, there is your six hundred outlets right there. I think perhaps that's what Dr. Harro had reference to, not six hundred dealers, but six hundred hearing aids that are on the approved lists.

MR. MORRIS: Earlier in the day Mr. Ryan, the attorney for Korvettes, made a number of statements as to his views and the views of his client on this bill as a hearing aid dealer. I was wondering if your views and the view of your organization are similar to those of Mr. Ryan?

MR. GILBERT: Emphatically no, Mr. Morris. Mr. Ryan, who is the legal counsel for Korvettes expressed himself as a lawyer representing his client, and his views or Mr. Newman's views, paraphrased through him, do not in anyway, shape, or form reflect the opinions of the Board of Directors of the New York State Hearing Aid Dealers Association.

He is not a member of the New York State Hearing Aid Dealers Association, nor the Guild, nor a signer of the Code of Ethics, and, therefore, although like my old friend Voltaire, he has the right to say what he wants to say. I do not agree with him and his views do not reflect ours, sir.

MR. DEMPSEY: You referred, Mr. Gilbert, to Section 7756, and that is the grandfather clause section, in which the stated age for an applicant would be twenty-one.

There was some testimony, as I recall, in Rochester, that the age should be lowered.

Does your association have any opinion as to whether the age should be kept at twenty-one or what age we should state?

MR. GILBERT: There is no real issue here, Mr. Dempsey. We would feel that if twenty-one is your figure, which is the legal age of consent, if a person has an eighteen month training period, prior to getting a license, then why not let him start at eighteen and a half rather than make him wait until he's twenty-one. Thus he will get a license when he's twenty-two and a half, sir.

THE CHAIRMAN: Thank you, Mr. Gilbert, for taking the time to be here. We certainly appreciate your testimony today.

We will have a five minute recess.

(Whereupon a short recess was taken at this time.)

THE CHAIRMAN: Will the hearing please come to order and let's proceed, ladies and gentlemen.

We have next to testify, Annette Gessilli.

MRS. GESSILLI: Gentlemen, my name is Mrs. Gessilli and I am here representing my organization called Rockland County Association for the Hearing Impaired.

Have you ever had the experience of not hearing when someone is talking to you? Well, just for an experiment, I stuffed my ears for a half hour so that I would get an idea of what my daughters go through without hearing.

Well, let me tell you it was quite frustrating not to be able to hear.

This is why a child with a heavy loss must have an aid that works well at all times.

This is why we as parents recommend the licensing of hearing aid dealers for many reasons. I would like to state a few, if I may.

Number one, for health and welfare of our children. A child with a hearing aid that doesn't work properly is very frustrated and sometimes gets sick with headaches.

Two, a child without a hearing aid is very nervous and unmanageable because they don't have the hearing that they would have if they had their aid. Therefore, if a dealer doesn't return a fixed aid promptly all concerned suffer.

Three, an ear mold that doesn't fit properly could irritate a child's ear and the constant whistle of an improper fit in the ear could make a child's day an unhappy one.

Four, the expense of having hearing aids repaired and buying the batteries is very expensive. Numerous hearing aid dealers take advantage of people by charging whatever they want for repairs.

As far as my own experience is concerned, I have been very lucky. My dealer "Heights Hearing Aid Center" in New York has given me good service, and as far as I know he has charged me fairly whenever I used his services.

What I have just stated are only a few important reasons why we feel that hearing aid dealers should be licensed. Thank you.

THE CHAIRMAN: Any questions?

MR. FRIEDMAN: What organization are you from?

MRS. GESSILLI: Rockland County Association for the Hearing Impaired. This is upstate New York in New City.

THE CHAIRMAN: For the benefit of some of the Commission members, Mrs. Gessilli, I understand that this is a rather new organization that is being formed and primarily a group of people that are parents of hearing impaired children.

We have a unit in Westchester County, I think which is perhaps about two or three years old at the most. It is a very active group which is very much concerned about the hearing impairment of their children and what is being done to help them, in forms of education, in forms of hearing aids, in forms of facilities in the community to participate with other students and other children of their ages.

I might commend you and your group. I think they are doing an excellent job and a fine job, and certainly the Commission is interested in the group you are working with.

MRS. GESSILLI: I must say that our organization has done a marvelous thing as far as our children are concerned. We have gotten quite a bit of help from many people that know their business.

THE CHAIRMAN: Any other questions?

SENATOR PRESENT: Mrs. Gessilli, you made reference to high charges or maybe exorbitant prices of repairs of parts, and yet you say that your dealer treated you fairly. Is that statement made on the basis of conversation you had with other membership in your group?

MRS. GESSILLI: Yes, either with membership of my group, or people that have gotten their supplies from other agencies where we live, and we ever so often compare notes as to how much batteries cost, and so forth. They are just not as lucky as I am, I guess. This is why it is very important.

THE CHAIRMAN: Any other questions?

(No response.)

Certainly on behalf of the Commission I want to extend to you every thanks for appearing here and taking your time to be here.

We have next Dr. Alan Feldman.

Dr. Bergman has agreed to permit Dr. Feldman to precede him, because Dr. Feldman, I believe, has a plane to catch.

DR. FELDMAN: As the previous speaker, I gathered so many notes and so forth on here, that with your permission I will have this retyped and sent to the Chairman upon my return.

I am Dr. Alan Feldman. My position is as Associate Professor in the Department of Otolaryngologists in the Upstate Medical Center, and I am an audiologist, not a physician.

I hold membership in the American Speech and Hearing Association, American Academy of Ophtalmology, Otolaryngology, New York State Speech and Hearing Association, and that should be sufficient to identify myself.

I certainly would like, Mr. Chairman, and members of the Commission, to preface my statement by noting my appreciation for the opportunity afforded to me to react as an individual, and not a member of any of these professional organizations, to the proposed legislation dealing with the licensure of hearing aid salesmen.

It is my understanding that the intent of licensure is a means of affording protection to the public. As one of the three groups of people who are normally engaged in the rehabilitation of persons with hearing impairments, I have long been interested in allowing that latter group of people some form of protection.

Approximately six years ago I consulted at length with Senator Lewison when he made a number of requests in this area, including the joint -- it was his intent to introduce legislation which would require examination by an otolaryngologist and audiologist for any person who is provided with a hearing aid, paid for out of public funds.

Periodically, since that time, various attempts have been made at one or another form of licensure of hearing aid salesmen.

However, none of these have come to fruition. On the other hand, the members of the hearing aid industry, sensitive to the criticism of a few of their peers, reflected upon all of them, sought to protect the public against bad advertising and unethical sales practices, and began work in conjunction with the Attorney General's Office of the State of New York, to develop a Code of Ethics on a voluntary basis. This Code of Ethics did not impart the false sense of protection to dealers by making it more difficult for new people to enter into the business, nor did the Code of Ethics in anyway identify the dealer as possessing any level of professional competence. Instead, it was directed at the core of the problem, which was integrity in advertising sales and practices.

I wholeheartedly supported the introduction of that Code and the activities of the body of people involved in this form of self regulation.

The major problem that has existed with the Code of Ethics is that it has no legal basis and all hearing aid salesmen are not required to conform to the Code, if they are not signees.

As opposed to the aforementioned Code of Ethics, the proposed legislation goes far beyond the desirable goals of advertising, and sales practices.

Instead, it also seeks to achieve protection of the public through the introduction of an examination intended to test the competence of dealers.

As a consequence, it would imply levels of proficiency and knowledge far in excess of what is both necessary and in fact in existence.

These examinations would be incompatible with the education and training of most hearing aid salesmen, and consequently would imply a level of competence that does not exist.

The cost of equipment and physical facilities necessary to carry out the types of audiological testing implied by the examination would be prohibitive for the average hearing aid dealer.

It is a fact that the topic suggested for the examination could only be tested as rudimentary sophomoric levels, without the dealer possessing an academic background that is far more extensive than he actually does possess.

The only one who would gain anything would be the unusual or occasional unscrupulous dealer that would find a means to using it to his advantage. Traditionally, three groups of people have been engaged in one form or another of hearing aid assessment or recommendation.

Because of the potential relationship of hearing loss to disease, the otolaryngologist has reserved the surgical and rehabilitation of the hearing impaired. The otolaryngologist may seek from the audiologist, who is a specialist trained in the various aspects of hearing and not medical rehabilitation -- it is the audiologist who frequently performs and interprets the special hearing tests and derives at the determination of the need for amplification and its requirements, and the associated rehabilitation.

Opposed to these professionals the hearing aid dealer is academically untrained. His training usually is through educational material distributed by manufacturers, and is limited.

While it would be desirable to have a higher level of training as a prerequisite to the sale of hearing aids, it is premature to establish feigned superficial criteria that would in effect not sufficiently offer the academic capabilities of salesmen.

The proposed legislation fails to recognize the hearing aid dealer as a commercial person who can best play the part on the three man team.

It is my contention that the inclusion of specified material for examination, as stipulated in the proposed legislation, would effectively be diametrically opposed to the goal that is desired. Rather than protect the public it would lend an area of competence to the salesman that he neither possesses or desires to possess.

I contend they should be wholeheartedly supported in this effort and rather than add to the confusion that they should be given a means of the enforcement of the Code of Ethics.

I would therefore be in favor of that form of legislation, which registers hearing aid dealers as salesmen, whose restrictions on advertising and sales practices serve as an effective means of protection to the public. This would reduce the effects of those few unscrupulous dealers who discredit the industry as a whole.

In order to achieve this form of legislation, I have made a number of suggestions for modification of the proposed legislation.

The main changes are:

1. The elimination of the confusing term fitter, and

2. The elimination of the examination.

The former best places the emphasis on the appropriate area of selling or dispensing.

The latter removes the attendent erroneous implications of competency through unrealistic educational criteria.

Some of the other changes deal with the erroneous conceptions, such as line 21, page 2, where it says compensating for -- I found another one also -- both improving and compensation -- I'm sorry, where improving and correcting --

THE CHAIRMAN: I believe it is "improving or correcting."

DR. FELDMAN: I am saying the words should be substituted. I have a copy of my recommendations which I will leave with the Commission.

The point is that the hearing aid does not in any way improve the fundamental ability to hear, nor does it correct the hearing loss. It aids the hearing, but it does not improve it.

It is simply a technical change.

Other changes deal with specifying the qualifications of audiologists, until State licensing of this latter profession exists in most States, and hearing and speech certificates of competence are used as a criteria for competency in audiology.

On page 8, lines 3 to 6, it would be important to note that the title of "Doctor" may in fact be legally used when it is an earned academic degree.

Also, audiologists should be specified here, because it would be more likely that a hearing aid salesman would present himself as an audiologist and as an otolaryngologist. If it is the sentiments of the legislature, and I hope it is not, that some form of examination must be included, I would make the following recommendations:

Page 12, line 3, instead of what exists: "The examination shall consist of written, oral or practical tests in the following areas:

"A. Selection and adaptation of hearing aids."

"B. Structure and function of hearing aids."

"C. Testing of the performance characteristics of hearing aids."

"D. Trouble shooting for defects in hearing aid function."

"E. Taking of ear mold impressions."

"F. Any other subjects deemed pertinent by the Board."

Finally, I wish to comment on the requirement of referral by a physician for juveniles, as stated in the proposed legislation.

The need of patients at all ages are far too complex to be handled arbitrarily by setting the age of sixteen.

For example, present rulings require all children up to the age of twenty-one receiving State aid to be examined at an approved hearing center, while recipients of support from various County Welfare Departments range from requirements of otolaryngologist examinations and to both otolaryngologists and audiologists examinations, and this is without regard to age in referral for recommendation of a hearing aid.

The State Department of Social Welfare now requires a validation visit to the professional prior to payment of the vendor regardless of age. This approach is certainly a move towards quality care.

Evaluation by the otolaryngologist and audiologist, should be considered essential prior to the initial purchase of the hearing aid, if one is really concerned with protection of the public. I do not believe this principle should be weakened as it is in the proposed legislation.

In conclusion then, I would applaud the intent of the Commission to provide increased protection to the public of hearing impaired individuals within our State. However, I would hope that the direction that is followed is one which strikes at the core of the problem, which is the need to mandate ethical business practices through the regulation of advertising and sales practices without the inclusion of an unrealistic examination that would be at odds with the goal of protection of the public.

THE CHAIRMAN: Are there any questions?

MR. MORRIS: Doctor, on the subject of this examination, many other fields are licensed by the State of New York without deferring quasi professionalism on the person who passes the examination. Yet, couldn't this examination be equated to the examination given to cosmetologists, barbers, hairdressers, who are required to know what the symptoms of ring worm are, or impetigo, or other contagious diseases, so they don't cut somebody's hair who has these diseases, even though the State isn't giving them the right to make a diagnosis?

DR. FELDMAN: This specified examination -- I have forgotten what pages it's on -- in no way would assure ill fitting of a hearing aid, improper sale of a hearing aid, or any other disregard for public safety, because I contest -- well, for example, the area dealing with the pure tone audiometry, including ear tone testing -- the levels at which one could test for this would depend. For example, we can test somebody who is a sophomore in college. This would not be the same level of testing as someone who is a senior in college, or someone who has obtained a masters degree, or someone who is seeking a doctoral degree. This doesn't say anything. All this does is denote an area implying knowledge in that area, without saying what the knowledge is.

Consequently, my point is you either do the job or you forget about trying to do the job. You either mandate that people need an academic degree and the appropriate training that goes with it, or you take care of the real gutty problem of the hearing aid public conflicts, which is not in this area, but in the area of sales -- as I view it -- in the area of sales and unethical practices.

I don't think that's the basic problem. People who are sold a hearing aid because they are fitted with a hearing aid to a dead ear are not sold because they weren't tested properly. They are sold because they were just sold unethically. Does that answer your question?

MR. MORRIS: Yes.

THE CHAIRMAN: In other words, you say that the sale of a hearing aid is unrelated to the knowledge that may be determined by this testing measure?

DR. FELDMAN: By this testing measure.

THE CHAIRMAN: You say they are unrelated?

DR. FELDMAN: Unless you have the accompanying academic achievements, I don't think you could obtain satisfactory levels of competence, as implied by these areas of testing.

THE CHAIRMAN: Could that be said almost of any testing procedure for any degree, or any license?

DR. FELDMAN: It usually is. Licensure requires a certain amount of academic training in a professional field. We are not talking about a professional field.

THE CHAIRMAN: There are many fields that we have in the State of New York that certainly are not professional or considered professional fields. They would like to obtain that status, they are not, but they do obtain a certain degree of licensing in that field, insurance licensing, you name it, we have it, all for the benefit of the public.

I think this would be in knowledge of the industry they are selling the product for.

ASSEMBLYMAN LEVY: After receiving a hearing aid, has anyone ever run into the problem of their case degenerating because of the hearing aid, or the wrong type of hearing aid?

DR. FELDMAN: Not so much the wrong type, but there has been research that demonstrated yes and no. In some people there is suspicion that the hearing has deteriorated as a consequence of the use of a hearing aid. These are not common and this is one of the advantages of continued follow-up by professionals of patients with hearing losses.

MR. DEMPSEY: Doctor, we had testimony when we were in Rochester of the fact that, I believe it was, the New York State Hearing Aid Dealers Association sponsored programs or attempted to encourage its members to study, take courses in the field in which they are involved.

Have you at the Upstate Medical Center had any occasion to have hearing aid dealers in courses?

DR. FELDMAN: We have, and I am not saying that people shouldn't have knowledge in this area. I am saying that we cannot effectively, through this type of testing procedure, generate a minimal level of competency that would be satisfactory toward the implied goal.

The implied goal really here is a far higher level of competency than presently exists among hearing aid dealers from the audiological side of their business.

THE CHAIRMAN: Would it be a fair statement to make that this is the beginning of obtaining such a goal or moving in that direction?

DR. FELDMAN: No, I think a much more appropriate way of doing it would be to require professional evaluation of patients.

THE CHAIRMAN: Doctor, thank you very much for taking your time to come down here and testify. We certainly appreciate it.

Our next speaker will be Dr. Bergman.

DR. BERGMAN: Mr. Chairman, members of the Commission. I too do not have a typed statement. As a matter of fact I wrote it after hearing half the testimony today, so I hope it bears on some of the things without reciting some points.

I will try not to burden the Commission by repeating some of Dr. Feldman's many points to which I concur, except I want to add, if I may, certain empathies and some details.

I would like to emphasize first that I feel the licensing of those who sell hearing aids is desirable to assure two particular aspects of protection for the public.

First, it will insure honesty in advertising and public statements about the sellers of products and the limits of sellers' services.

Secondly, it will insure the ethics of the sales practices. What is the composition of the hearing impaired public about whom we have been talking all day, for whom licensing seeks to provide protection? I think we should recognize the remarkable advances in deafness that have brought surgical relief to many, many thousands. As a matter of fact. Those who suffered from one relatively type of hearing impairment classified generally as conductive have been helped. These have left a residue which is classed sensory neural, and now constitutes the impairment of hearing aids.

These include children who were born with deafness and then children and adults who developed deafness or hearing impairment during their lifetime.

As a previous witness made clear, the dispensing of a hearing aid is now very difficult. It is difficult because the needs of this group of sensory neural deaf is highly complex. This group, by surgery, were the group easiest to help with the hearing aid. Medical treatment has now effectively removed them from the group needing hearing aids. Those who remain are the most difficult, and possess the type of hearing loss, which the hearing aid begins to compensate for and in most cases is relatively unsuccessful with.

They include the need for an understanding of the genetic basis of their problem, as in children. We are learning a great deal today that those children who are deaf, are deaf for reasons that are becoming clearer. They aren't just deaf, and we are learning why.

Also, the medical implications of this condition, for example, neurological disorders, such as acoustic tumors are now being recognized much earlier than formerly. As Dr. Heller said this is partly due to the technical advances in audiological techniques and procedures. Lastly, I will discuss the aspects of aging.

It is interesting for us to know in this discussion that about seventy-five percent of hearing aid users are over forty-nine years of age. About fifty percent are over sixty. About eighty-two percent of the hearing impaired public that we are talking about are over sixty, even though this group constitutes only ten percent of the total population.

It is obvious that the group we are talking about is mainly an advanced age group. The bill, as now drawn, does recognize the need of your children for medical examination before hearing aids are sold to them.

However, it ignored the equally dangerous situation in which adults with potentially crippling diseases and even diseases such as tumors may purchase what they believe to be correction for their problems without first receiving competent medical advice.

Incidentally, while it was believed for a long while that these medical problems did not exist in all persons, and that their hearing loss was an inevitable concomitant of living, this is no longer accepted. More and more of them are turning up with surgically correctable and other conditions. Some of them do not have dangerous conditions, but we are beginning to understand them.

Who is available to service this group? First, we have the otologist, who through his certifying board control, or controlled by his board,, is known to have a recognized minimum of professional training, knowledge, and experience.

Secondly, the audiologist, who through his certified agency is known to have a recognized minimum of professional training, and knowledge, and experience.

A member of the Commission this morning, and others today, wondered about who was the audiologist, and what does he do. I would like to add to that, since this is something I have given my entire professional life to.

Today well over one hundred sixty colleges and universities in this country have established full academic programs in audiology. Students majoring in this professional discipline take from five to eight years of academic training beyond the high school, culminating in the award of the degree of Master of Arts or Sciences, or Doctor of Philosophy, Science or Education.

Audiologists hold academic ranks up to and including full professor in some of the learing medical schools in this and other countries, as well as in non-medical schools.

There are now yearly, or bi-annual international congresses of audiology in which both the medical and non-medical professionals in this field work as one profession.

Professional publications in audiology appear in many western nations, including our own.

Allied in this profession are physicians, physicists, and educators of high technical competence, all of whom may call themselves audiologists. The term audiology is thus properly applied to an internationally recognized profession.

The third proof, of course, comes in where there is a need for an amplifying device. This requires a person who is competent in the selling of hearing aid devices. We must remember that the hearing aid, however, is but one star in a constellation of services needed by most people who now require the use of a hearing aid.

Rehabilitation services, such as lip reading, oratory training, and others mentioned previously here, are recognized as part of the audiologists' unique contribution to the rehabilitation of the hearing impaired.

The two groups are recognized professions requiring a very high level of complex training. The third, which is the concern of the bill, does not. The bill, in fact, recognizes on page 11, line 27, which has been mentioned many times today, and page 12, line 1, that hearing aid dealers need only have completed high school training or the equivalent.

No professional training is required. There is therefore room for question that the sale of hearing aids is a profession in the general use of the term. It is true that some hearing aid dealers in this field, some are here today, have great knowledge accumulated over many years in this field.

It was true that roentgenologists, X-ray specialists, who may have had no training were often the experts whom physicians applied to for complex interpretations of X-rays years ago. There was one who was a very famous one in New York City, who passed away, I think, some years ago, but that was in years gone by.

It is true that one can accumulate knowledge in one's lifetime in many fields. This is 1970, and I hope we look upon skills and professions as something today we can train people for through formal university training.

Specifically, the present bill employing, the term fit, fitting, and fitter, and requiring the examination on technical material places over the licensee a sufficient mantle of professionalism recognized despite any professional training to render rehabilitation services to handicapped persons.

I suggest that therefore all references to the fitting of hearing aids be changed to dispensing and sale of hearing aids.

Secondly, the examination should test only those proficiencies and techniques required for the dispensing of a hearing aid to be stipulated by the Board.

Third, the composition of the Board should continue as drawn, to have a majority of representatives from the two professions rendering high level service to the public, otology and audiology. I would certainly not be right to have one who grinds lens on a Board to certify ophthalmologists.

There thould be an appropriate definition of the Board members regarding the certification of each of them in their fields, either otology and audiology.

Fourth, the sale of a hearing aid to new users should follow for patients of all ages and appropriate professional work-up by those certified oreligible for certification in otology and audiology.

I would like to make one more point before concluding this formal part of my statement.

We have just completed a five year study, supported by the Department of Health, Education and Welfare, on hearing and aging. This alludes to an earlier remark I made. We have learned that the deterioration in auditory abilities in aging goes far beyond the change in the audiometric pattern. To do an audiometric test of a person who is forty-five, fifty, and beyond, and to infer from that that there is knowledge about the auditory disorder is extremely naive.

Our daily responsive research shows that without a doubt that in the forties there are substantial changes in auditory behavior, not related to the change in the end organ of hearing. These changes require knowledge of aging -- I must take issue with my long term colleague and associate, Dr. Heller on this. I think his gerontological friends would not be happy with his implication today that when a person reaches an advanced age don't trouble him with extra trips on the subway. We do feel, and I just presented a paper to the gerontological society on this; they certainly would agree that not only are people in these years in need of the help we can give them, but certainly they can profit from that help.

THE CHAIRMAN: Are there any questions?

(No response.)

THE CHAIRMAN: It seems as though we have a great deal of testimony today from the professional field and we are sort of running out of questions. We asked all we could.

Thank you Dr. Bergman for taking your time to be with us today and giving us the benefit of your knowledge.

Dr. Lang will be our next speaker.

DR. LANG: Mr. Cerosky, Mr. Benowitz, members of the Board, let me very briefly introduce myself.

I am Dr. James Lang, Associate Professor of Hearing and Speech Science at Brooklyn College of the City University of New York.

I am immediate past President of the audiology study group of New York, and it is that group that has asked me to come here today and speak in their behalf, I guess.

I am a little bit reluctant to speak for them, because I am a member of the hard of hearing population. I wear two hearing aids, and it therefore is difficult for me to know when my comments are entirely personal and when they are professionally motivated, so I am going to endeavor to speak for them, because that is what they asked me to do.

Surely it is by now abundantly clear that at least on the surface there is an emotional issue which serves to separate audiologists and hearing aid dealers. I think this is largely a surface issue, but I think that that issue has been brought entirely too forcefully to the surface at these meetings today, so much so, in fact, that I believe it has beclouded several fundamental, but actually not very complicated issues.

Audiologists seem to be concerned that hearing aid dealers will be ethical and competent, and on the other hand, hearing aid dealers are concerned that audiologists will be ethical and competent. Someone said, and I believe it was a hearing aid dealer, or at least a representative of the hearing aid industry, that we all make mistakes, and when audiologists see a client he is every now and then going to be a client with whom a hearing aid dealer has goofed and similarly every now and then a hearing aid dealer is going to see a client with whom an audiologist has goofed, because we are all human and we do make mistakes.

I don't think we can legislate against those mistakes, though we could perhaps reduce them by appropriate legislature. I think that what we should endeavor to do instead is to try and legislate against the basic problem that seems, I think, to concern all of us here, and that is the conflict which I shall refer to repeatedly in my presentation, namely the concept of conflict of interest.

Audiologists are not permitted by their Code of Ethics to sell a product which relates to decisions which they are professionally charged to make. Members of the medical profession are by their Code of Ethics prohibited from selling services, products, etcetera, which relate intimately to the decisions that they make about their clients.

If there are abuses in the sale of hearing aids, it is partly because hearing aid dealers are human and we wouldn't want them to be otherwise, but it is also partly because of the problem of conflict of interest; In my opinion the bill which is before us for discussion today tends not to legislate against conflict of interest on the part of hearing aid dealers. It tends instead to bring conflict of interest into legislative sanction.

I refer specifically to that part of the bill which requires that hearing aid dealers have a kind of training which would seem on the surface to qualify them to make decisions concerning whether or not a hearing aid should or should not be worn and so on.

Now, may I be clear. I am not speaking in any sense against extending the kind of education that hearing aid dealers might have or do have as specified in the bill I would

Simply refer you to the suggestions concerning testing of hearing aid dealers, made by the speakers immediately preceding me, Dr. Bergman, and Dr. Feldman.

May we consider, ever so briefly, just exactly what kind of decisions need to be made with respect to the dispensing of a hearing aid.

Well, first of all one simply needs to make the decision as to whether or not a hearing aid is needed. There are many individuals who come to the attention of every one of us who do not need a hearing aid, or at least benefit from it only marginally.

On the one hand there might be something about their hearing loss which is medically remediable. We have heard that discussed at great length, and I won't expand on it further.

There are individuals who come to the attention of all of us who are malingerers. They are seeking dishonestly to obtain attention which they do not deserve, or they are seeking dishonestly to be issued, by the State, a hearing aid which they don't need, and which they desire to possess only so that they can go out and sell it.

There are other individuals who come to our attention who are not really hard of hearing, but who have instead what we sometimes call a functional hearing loss.

There are emotional problems, which cause them to act as if they are hard of hearing and to think of themselves as hard of hearing. Surely a hearing aid will not benefit these individuals, at least not in any long term sense.

There are some individuals whose loss is not as significantly great, to be able to profit significantly from an instrument like a hearing aid, and there are others whose loss is too great to profit significantly from a hearing aid, although that does not imply that they would not profit to some degree.

There are individuals who come to the attention of all of us that don't really need an aid, or don't benefit from it significantly.

If an aid is significant the question has to be answered what type of hearing aid. Decisions have to be made as to whether or not the individual should seek medical care, whether or not he might profit from lip reading training, especially as regards auditory training and training in lip reading. This is an area which many hearing aid dealers seemed to be rather sensitive about.

I can recall, when I first lost my hearing, roughly eight years ago, and began to seek the guidance of professional individuals. I was not at that time in the field of speech and hearing at all. I had no notion that auditory training and lip reading might aid me. I was given the impression -- I don't believe I was necessarily dishonestly given the impression -- but I was nevertheless given the impression if I would simply wear a hearing aid that that was about all of the care from which I might profit, because I do not have a medical remediable hearing loss.

Subsequently I did come under the care of an audiologist, who urged, even insisted that I receive auditory training and training in lip reading, and I believe that those experiences were beneficial to me, but they were skills which to a degree at least I would have acquired with experience.

I acquired them more reapidly as a result of the training. Here I have attempted to outline some of the decisions that need to be made with respect to whether or not a hearing aid should be worn, and what kind of rehabilitative services, other than the wearing of a hearing aid.

To the extent that a hearing aid dealer participates in the making of these decisions, which will determine whether or not he can or should sell the individual a hearing aid, to the extent that he participates in those decisions, he runs the risk of conflict of interest.

The American Speech and Hearing Association has endeavored, I think reasonably successful, to legislate with its members against conflict of interest. The medical profession has fairly successfully legislated, with its members, against conflict of interest.

I do not see that this bill will remove the specter of conflict of interest, and in fact I believe this bill will do the contrary or tend to. It will tend to legislate conflict of interest into existence.

Surely hearing aid dealers are an absolutely vital part of our community. If audiologists cannot sell hearing aids, and if medical personnel cannot sell hearing aids, who is to sell the aids but the dealer?

Therefore, I would like to suggest several things with respect to the bill, some of which have already been mentioned, and those things that have already been mentioned I will move over rather lightly.

Firstly, as regards training. Surely hearing aid dealers could benefit and their clients could benefit from greater training. One of the reasons for increased training is so that the hearing aid dealer can more appropriately read the literature of the field, and keep himself abreast of the times.

A little earlier we heard people poo pooing the idea that a hearing aid dealer needed to know about the physics of sound. How indeed is he to read the professional literature if he is largely ignorant of such technical affairs? Surely the hearing aid dealer needs more training in order to avoid misinforming the public. I do not make this next comment as an accusation of hearing aid dealers, but merely as a report of personal experience.

At the time that hearing aid dealers were first putting hearing aids on me -- I realize now by hindsight -- I did not realize it then, because I then did not have the kind of technical training I have today -- but I realize by hindsight that they gave me several kinds of misinformation, concerning ways in which I might benefit or fail to benefit from use of a hearing aid, and ways in which I might better adapt to a hearing aid. You know one doesn't just put on a hearing aid and start to hear. One has to quite literally learn to hear all over again.

Whether or not this information I was given was an act of dishonesty or simple oversight due to lack of knowledge it seems to me is entirely besides the point. The simple reason is that we can't legislate such difficulties out of existence. With increased and broadened knowledge, the possibility of such misinformation being given would hopefully be diminshed and that's the best we can hope for, perhaps.

Another reason why the hearing aid dealer needs additional training and broadened training is so that he can better serve his industry.

There is a gentleman present here today, who has testified before this group, who has done great service to his industry, because he is a man with above average technical training. He has helped to make available to the public a new kind of hearing aid which is of great service to the industry, and to the public, and if hearing aid dealers had the kind of technical confidence that that gentleman has, I can't help but believe that the industry at large would be greatly benefited. Finally the hearing aid dealer needs increased education so that he can more effectively communicate with other professionals to arouse respect for himself in communicating with others.

So, indeed, let's see if we can't legislate greater training for hearing aid dealers, but not in such a way as to legislate conflict of interest into existence.

Now, concerning the matter of composition of the Board of Examiners.

The point has been made on several occasions that there are no hearing aid dealers on the Board of Examiners for physicians and there are no hearing aid dealers on the Board of Examiners for audiologists, and therefore why have audiologists and physicians on the Board of Examiners for hearing aid dealers?

Well, if hearing aid dealers are to do nothing more than dispense, that is to say if they are to do nothing more than to sell and to service hearing aids, then frankly I question why there should be audiologists or physicians on the Board of Examiners. But if this Board legislates conflict of interest into existence, by giving the hearing aid dealer some participation in the decision making process, relative to the product themselves, then I believe some checks and balances need to be built into the system with namely those individuals who do not have a conflict of interest. Audiologists and physicians should indeed be involved.

Does the bill protect the public? I have heard that question asked on several occasions. I hope my use of the phrase "conflict of interest" is not getting tiresome and burdensome, but it is a concept I haven't heard mentioned nearly enough.

As sharp selling practices, dishonest selling practices are most likely to occur when conflict of interest is involved, or where one hearing aid dealer can indeed offer products that differ in some significant way from those products of the man down the street.

If, on the other hand, hearing aid dealers instead of representing one or a very small number of manufacturers, if hearing aid dealers represented, as the druggist represents, a large number of manufacturers, I believe that there would be some advantage to the public in this.

Some of my friends, who are in fact audiologists, whereas I am merely a teacher of some courses that audiologists take, some of my friends, who are audiologists, tell me that especially in small towns and small communities, it's very difficult to find available in those communities hearing aid dealers whose stock of hearing aids is sufficiently diverse to make it possible for them to give to the public the particular type of hearing aid that is on occasion required.

I would like to point out that this tends to pull the rug out from under the notion that there are hundreds of hearing aid dealers in this State as contrasted to very few audiologists and physicians in the State. The implication you see is if there are hundreds of hearing aid dealers widely disbursed in the State, that surely, just by their numbers and by their description, that they must be giving the public adequate service. But all too often they do not give adequate service, partly because -- not because they are dishonest -- not because they are not trained -- but because all too often they represent one or a very few number of manufacturers, and often because they carry the models of any one manufacturer.

What would happen if the local drug store sold the pharmaceuticals of one manufacturer only? We have something akin to that in the hearing aid industry today, especially in smaller towns, much less so in large cities, such as New

York City.

Let me move on now to some specific suggestions concerning the bill. These will be brief, and you will be quickly through with me.

On page 2, line 27, I would like to suggest that there is a logical inconsistency there. It says that "The hearing aid dealer may make measurements of hearing, solely for the purpose of making selections of hearing aids ...."

Please, if I am correct and if I see this properly, if the hearing aid dealer makes selections or indeed makes decisions as to whether or not a hearing aid should be worn, he is in effect participating in the diagnostic process, and yet when we turn over to page 12, lines 18 through 20 it says "No part of the examination shall consist of tests requiring knowledge of the diagnosis end or treatment..." If this Board wishes to write a bill in which the hearing aid dealer is indeed involved in the diagnostic process, then why would it specifically legislate against his being tested and trained in the diagnostic process.

If I may repeat myself, the hearing aid dealer should not, because of conflict of interest, be involved in decision making processes.

Page 4, line 9. This has already been mentioned. I believe that physicians and audiologists should be spelled out in more detail.

Page 5, beginning on line 26. A question was just recently raised by Mr. Benowitz con-concerning the calibration of audiometric equipment.

Now, you know if hearing ais representatives had more knowledge about the physics of sound it would be immediately apparent to them that it is a waste of the tax payers money to pay for calibration of audiometric equipment only to use that equipment in an environment which is not calibrated.

To be more specific, there is an organization for establishing standards here in the United States which specifies the kind of environment, acoustic environment in which hearing aid tests should be administered if they are to be valid. That same organization specifies techniques and standards for the calibration of audiometers. It makes no sense to have one without the other. It makes no sense to calibrate an audiometer and use it in somebody's living room' as I say, if hearing aid dealers had more knowledge of the physics of sound it would be abundantly apparent to them that this is true.

Page 8, line 5. I believe that the term "audiologists" should be added to that line, assuming. of course, that audiologists is appropriately defined earlier in the document,

Page 8, line 5, that is.

Now, I refer to page 9, lines 8 through 11. The section on age at which individuals should be required to have medical and/or audiological examination.

I am a little mystified by this, and several others who have spoken have today seem to be as mystified as I.

If there is some advantage to the public of a medical examination and an audiological examination, why limit it to people who are under sixteen? The answer we are given is because there aren't enough audiologists, and there aren't enough physicians, and in order to substantiate that purported fact, the question has been raised several times, how many audiologists, and how may physicians are there in New York State, and what is their geographic description?

I don't believe that those are entirely adequate for getting the adequacy of potential service that audiologists and physicians might give to the public. I would respectfully suggest to the Board that they consider changing the concepts here, not to one of age, but to one of first time users of hearing aids.

What would be considered judgment about the concept each first time purchaser of a hearing aid should have a certificate from a physician that his hearing loss is or is not medically remediable, and he should then have a statement from an audiologist concerning the particular type of physical characteristics of an aid that he should have, and better still, the particular make and model of aid that he should have?

Page 12, lines 18 through 20. Here I

have already alluded to this in part, at least. This section deals with the concept of conclict of interest, and I won't repeat my remarks there.

However, I think we should change. I would like to suggest that we change the concept of prescription from a physician to a statement that a client has been given medical counsel concerning appropriate course of treatment.

The present implication is that the physician has both the time and the training to specify make and model of hearing aid. In our society it is not polite to use the word physician, and the word incompetent in the same sentence, and so I will come at it from another angle.

Surely a physician is too busy to be giving a kind of test and examination to a client which other professionals are specifically trained to give, namely audiologists; Why should the physician, whether he is competent or not, why should the physician take his valuable time to give the kind of examination that someone else right in hiw own organization, namely, the hospital where he is working or clinic where he is working can give it. So let's not question the physician's competence; let's simply recognize he is too busy, and he has other things to do.

THE CHAIRMAN: Are you still addressing yourself to page 12, lines 18, 19 and 20?

DR. LANG: Yes. Wait a moment, maybe I have made a mistake here.

THE CHAIRMAN: I couldn't follow what you were saying with reference to that.

DR. LANG: I think I've got amistake in my notes here. There is a statement in here -- the wording goes something like -- I have a mistake in my notes. I am referring now to page 9, 8 through 11, excuse me. Specifically line 10, in which it says "Prescriptions from a duly licensed physican of the State of New York."

It is my belief that all that is needed is a statement from a physician that the client has been given appropriate counsel concerning an appropriate course of treatment for his condition, and it should then be the audiologist who will specify details concerning either the prosthetic device, and/or training such as auditory training and lip reading.

Once again, not because the physician may or may not be competent to do this, but he is simply too busy, doing other things which he is uniquely trained to do. Why not have the audiologist do the things he is uniquely trained to do and why not have the hearing aid dealer do what only he can do, assuming he does not have to tussle with the conflict of interest. Let him sell and make a profit and enjoy the profit thereby.

Our country is built on the profit motive. There is nothing wrong with it. I conclude, gentlemen.

THE CHAIRMAN: Thank you, Dr. Lang. You seem to address your remarks primarily to the fact that this bill seems to create ir cibdibe conflict of interest with the hearing aid dealers in their own industry.

Let me ask you this simple question. Is that not the case right now without legislation?

DR. LANG: Yes, it is, and I believe that you will put the area of respectability on it with this bill. That does not imply, however, that I am against legislation which would license hearing aid dealers.

THE CHAIRMAN: You would think that the provisions that you suggested be amended to take care of the conflict of interest charge?

DR. LANG: May I answer that by saying that I believe that if I have succeeded in alerting you to the issue and drawing your attention to those areas that strike me as legislating conflict of interest into existence, that you will in your greater experience, having heard all of the testimony, indeed find ways of rectifying this problem.

In other words, I don't know that I have made a sufficiently detailed study of the bill to raise much more than the issue and to point to certain areas that I think relate to the issue.

THE CHAIRMAN: Are there any questions?

(No response.)

THE CHAIRMAN: Dr. Lang, thank you very much for taking your time to be with us and give us the value of your testimony.

We have one other person that wishes to testify, Mr. Lipton.

Is there anyone else in the audience that would like to testify?

(No response.)

Our next speaker will be Mr. Lipton.

MR. LIPTON: My name is Edward A. Lipton. I have engaged in the intensive practice of law for approximately forty-three years, over a quarter of a century of which has been representing people in the hearing aid industry.

I am a former member of the National Committee on Ethics, the entire industry, having been succeeded by Judge Blank of the Pennsylvania Superior Court.

I am proud to say that I helped promulgate the Code of Ethics as a practicing lawyer. I must disagree with the people who call themselves audiologists when they decide what the Attorney General can enforce in the way of fraud. He can enforce the Code of Ethics, and he can prevent fraudulent practice.

As recently as today, the head of the Consumers Fraud Bureau has stated there is not one complaint against a hearing aid dealer now pending. I am the enforcing arm of the Department of Consumer Affairs.

Mr. Land Webber, enforcement counsel, sends every complaint which he receives from New York State about a hearing aid dealer to me. There is not one complaint pending and the few that have come to me have been satisfactorily completed to such an extent that a few of the people have tried to send me checks as fees, which I felt I had to return because I was performing a public service, and the New York Hearing Aid Dealers Guild, which I represent, was performing a public service.

THE CHAIRMAN: That might be a conflict of interest.

MR. LIPTON: It may well have been.

I legally organized New York Hearing Aid Association, and the New York Hearing Aid Guild, and those organizations were established for the purpose of elevating the quality and ethical standards of hearing aid service to the community. That was approved by the Attorney General and signed by two Justices of the Supreme Court of our State.

I have heard remarks which might humiliate or belittle, or downgrade the position of hearing aid dealers. If that was their intention they are unwarranted.

In filing my membership corporations I was asked by the Attorney General to say that we will not constitute a monopoly. I, as an individual, am against giving a monopoly to any group, so that a member of what he terms a profession cannot come before this Commission, or any other governmental agency and say nothing can be done without our approval. I do not mean to heap praise or deliver support of one or the other, as has been done here, and I hope I am not disbursive. I will say this. Remarks have been made that representatives of manufacturers are not doing a proper service, because they represent only one dealer. This has been held illegal.

The Federal Trade Commission has obtained a cease and desist order and no manufacturer had the right, nor has he required any dealer to sell only his product. That's the federal law, even though some of those who testified intimated or implied that such was the case: I feel that since it was said as recently as this afternoon that this industry is among the cleanest in our State, that I should come here and tell it to you.

THE CHAIRMAN: Thank you, Mr. Lipton.

I want to clear with you, and certainly the members of the association you represent, that because we are considering a licensing law that this in no way castigates the association or even reclouds the association of any wrong doing.

MR. LIPTON: Thank you, sir, and we feel there is so much good in this law.

THE CHAIRMAN: Any other questions?

(No response.)

THE CHAIRMAN: Thank you very much, Mr. Lipton.

Mr. Porcelli will be our next speaker.

MR. PORCELLI: Gentlemen, my name is Dominick Porcelli and I am President of the New York Hearing Aid Guild.

This encompasses the nine counties, five of which are composed of the boroughs of New York, Nassau, Suffolk, Westchester and Rockland County.

Our membership is affiliated with the New York State Hearing Aid Association, and we support wholely their opposition on this licensing act. Although we are on record as opposing licensing with an open mind, we feel there is benefit in this bill with minor changes as have already been mentioned.

I would like to make some personal comments on testimony that I have heard here today.

The audiologists group have done their homework. It would seem evident to me from the testimony presented there that they have not, however, been able to sell the idea of their services to the general public, and nor to the practicing physicians, nor to the otolaryngologists who are the ear specialists in this State. They ask you gentlemen in the bill to license the fitters and sellers of hearing aids to uplift the standards of our industry, to in effect regulate them into a profession which somehow they feel they need or do not have.

Furthermore, they wish to cloud the issue of fitting a hearing aid to an adult person with medical terminology as to acoustic tumors and possible health hazards to those individuals and the fact that hearing aid dealers will fit hearing aids to people who are not in need, or who have not had medical determination.

Now, I am sure you gentlemen have done some research before drawing up a bill, which with very very minor exceptions is so clear and concise, and realize that a hearing aid is by far the last resort -- that no person is anxious to wear a hearing prosthesis.

The audiologists themselves have testified that a hearing aid is worn by the population we have today, which is largely comprised of sensory neural cases, due to the fact of advances in research. Our otolaryngologists and the audiologists have done away with the conductive losses which we are now faced with.

People who have sensory neural losses obtain marginal benefits by a hearing aid. These people, by no stretch of the imagination have been going out and purchasing hearing aids at a cost to themselves when the hearing aids are absolutely no benefit to them, and not without consulting a physician first. The hard of hearing public is not that ignorant and they have their own emotional constitution which protects them from going out and purchasing hearing aids unprotected. There may be a case where a hearing aid dealer let the person purchase a hearing aid, where that person did not have a substantial hearing loss. Yet I make this statement that this hearing aid cannot be harmful to an individual, first of all, and second of all that this individual in most instances will have seen a physician before obtaining it.

Thirdly, that the individual before obtaining the hearing aid ascertained whether or not the person would function from the use of the hearing aid which is left up to the person.

In conventional surveys, sir, as in my office, you can't dictate to the public that they must buy this hearing aid and hold a gun on them. This man has the choice to purchase a hearing aid or not to purchase a hearing aid, or to go to a physician for further help, or not to go to a physician for further help, whether to go to a speech center or audiology center or not to go.

It has also been pointed out that some people require auditory services and teaching them to hear through this new sound of an amplifying device of a hearing aid. At the present time if I wanted to refer my particular customers to a speech and hearing center for further auditory training, this becomes a practical impossibility. To the best of my knowledge Hunter College is not having any further auditory speech reading or lip reading classes any longer. It is the only place where we can send people for further services not supplied by the hearing aid dealer.

Presbyterian Hospital, I was told just a few weeks ago, is not handling adults on a referral basis from dealers, because they are too busy with the children's program at the moment. The same holds true in most speech and hearing centers throughout New York.

Under the Medicaid program, when it was first attempted to give these people all the services that could possibly be done, regardless of cost or need, and they tried to send every one of these people, which is just the Medicaid population, through speech and hearing centers. One center in the Bronx ran one month behind, turned everyone away and sent them to hospitals in Manhattan.

ASSEMBLYMAN LEVY: How many patients do you serve?

MR. PORCELLI: I don't serve customers.

ASSEMBLYMAN LEVY: Treat them.

MR. PORCELLI: I don't treat them, I sell hearing aids.

ASSEMBLYMAN LEVY: How many are under the Medicaid program?

Over a period of a year how many have you served under the Medicaid program?

MR. PORCELLI: Out of what?

ASSEMBLYMAN LEVY: Out of how many people you served. Total numbers. What are we talking about?

THAT CHAIRMAN: I think what Assemblyman Levy is trying to find out is how many of your customers that you sold hearing aids to are of the Medicaid population?

MR. PORCELLI: The Medicaid population is about ten percent of my business.

ASSEMBLYMAN LEVY: They have a free choice of picking out whatever hearing aid they would like?

MR. PORCELLI: They have the free choice of whatever means they wish of getting the hearing aid. They have the choice, but it must be certified by the otolaryngologist, because here we are not talking about them spending their own funds.

After they make the choice it must be okayed by an otologist who is Board certified or Board eligible.

ASSEMBLYMAN LEVY: What is the range?

MR. PORCELLI: Seventy-five dollars to four hundred dollars and up, depending on the type of prosthesis needed or desired.

ASSEMBLYMAN LEVY: What does the average run?

MR. PORCELLI: Around two hundred fifty dollars, three hundred dollars.

ASSEMBLYMAN LEVY: A hearing aid?

MR. PORCELLI: A hearing aid. It is a

costly item. It is something a person doesn't go out and very lightly give up their hard-earned money for. They have attested by the fact that the few problems that we have in the Attorney General's Code of Ethics -- the buyers in large are not feeling that they are being taken advantage of, because they have recourse in a commercial entity. They can go back to the man they purchased it from, just like you could if you were dissatisfied with the suit you are wearing.

THE CHAIRMAN: May I make one correction for the record.

I don't believe that was the Attorney General's Code of Ethics.

MR. PORCELLI: This is the Code of Ethics distributed through the industry and promulgated by the Attorney General.

THE CHAIRMAN: Is this not a Code of Ethics submitted to his office by your association?

MR. PORCELLI: No, this was drawn up in conjunction with the Attorney General. People at the Attorney General's Department sat down with our representatives and we jointly drew this up. It was promulgated by Attorney General Lefkowitz, and it is enforced by his agency.

We acted as advisors and so far in our advisory capacity we have been able to police our industry to the extent that claims are almost non-existent against hearing aid dealers.

MR. BENOWITZ: May I interject here?

You have been using one frame of reference as to how many claims are made. I think it is a poor frame of reference, because there are enumerous complaints that I have heard in my field of work for the Commission.

I have heard of a person many times buying three or four hearing aids which did not meet his respective needs: You use one frame of reference, and I use this frameof reference.

In your experience there are many that are not heard at all, and I would like to go on record as saying that.

MR. PORCELLI: I would tend to agree with you.

THE CHAIRMAN: I might add, and I don't intend this to be derogatory to anyone here, but I have had the opportunity to speak to many groups of hard of hearing persons and I asked the question frankly of what their relationship was and how they feel about hearing aid dealers; I will be frank to say that I didn't get a good response, so I don't think you are holding a good image from these people who wear your hearing aids.

MR. PORCELLI: Our association has taken the position that we do see benefit in this bill. Granted my personal opinion is that licensing is the only way that you can insure a minimal, and I use that word quite broadly, minimal level of competency or background. It is the only way it can be enforced; But now we are talking about practical everyday mechanics of handling this and specifically from suggestions that have been made to you people: That is not in the bill itself, so I can't address myself to the bill.

I am addressing myself to the testimony that has been made, allegations and so on that were made.

ASSEMBLYMEN LEVY: Bob, in your study, did you come up with any facts and figures of the hearing aids sold in this State versus other States? Are we average, above average, under average? Are we spending more in this State than in any other State?

MR. MORRIS: Yes, we are spending more money that any other State, except California: We are the second and third largest purchasers of hearing aids in the entire world.

According to the testimony developed before the Senate Committee, the Veteran s Administration annually purchases about five thousand hearing aids under contract.

THE CHAIRMAN: I want to follow some kind of order.

We interrupted. Are you through with your statement, Mr. Porcelli?

MR. PORCELLI: There is one further comment I wanted to make.

THE CHAIRMAN: Complete your statement, first.

MR. PORCELLI: That was to be directly addressed to the idea of conflict of interest.

If we want to draw that to its ultimate

conclusion, that means that every surgeon in the United States would not be able to recommend surgery to his patients without sending them somewhere else. Optometrists can't recommend glasses without substantiation. A physician can't recommend a certain course of treatment or continuing course of treatment for you to come back to him for his services without entering into conflict of interest. This is the basis our country is built on, and hearing aid dealers are no more honest or dishonest thann any other service provider or any other prosthesis provider.

With that I think enough has been said for the day. If you people have any questions I would be glad to answer.

MR. MORRIS: I would like to ask a question, if I can.

This is not a section that is in this bill, but it is in the bill that's in effect in Oregon: In that State a dealer who fits or sells a hearing aid, a non-prescribed hearing aid, to a person which later proves to be useless to the person, does have recourse to require the dealer.

ro refund his money.

How would you, as a dealer, feel if an amendment was made along those lines?

MR. PORCELLI: It probably would be taken advantage of unfairly by the public, but it is being taken advantage of without being written into the law now by the public, under our Code of Ethics.

Most hearing aid dealers will make restitution to their customers providing they come back and substantiate they do have some form of legitimate complaint, even though it could be proven in some instances that the hearing aid is defective.

I don't want anyone in my office that is unhappy. It is not going to only take up my time, but spoil my customers that are happy.

MR. MORRIS: I am referring to an instance where a hearing aid is sold to someone that can't be helped by amplification.

MR. PORCELLI: I take exception unless the person is deaf, and I use that work with its entire purpose; I say to you anybody who can hear at all, will be helped by a hearing aid.

Your children fitted at PS 240 are perfect examples of margin of fittings. There isn't one of them who cannot hear the sound of an automobile approaching, cannot hear the sound of an automobile on the street, and he can't hear it , and then with a hearing aid, if he can hear the slightest sound of an automobile, he has been benefited by it.

ASSEMBLYMAN LEVY: Is that a medical opinion?

MR. PORCELLI: This is my personal opinion.

THE CHAIRMAN: Any other questions?

(no response.)

THE CHAIRMAN: Thank you, Mr. Porcelli for taking your time to be here and testify for us.

This ends the hearings of the scheduled hearings we had for consideration of the bill that is before us in the Assembly.

I want to take this opportunity to extend my thanks to all of you that have taken your valuable time to come here and give us the value of your information and benefit of your knowledge, so we can consider this when we determine what action we, the Commission, are going to take with the bill.

I also want to thank those members of the Commission that have taken of their valuable time to be here and witness the testimony that we have had both here and in Rochester.

Thank you again.

(Whereupon, at 4:50 o'clock p.m., this hearing was closed.)

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